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भारत का राजपत्र
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No. 6] NEW DELHI, SATURDAY, FEBRUARY 7, 1998/MAGHA 18, 1919

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)
केन्द्रीय प्रत्यक्ष कर बोर्ड
नई दिल्ली, 28 जनवरी, 1998

का. आ. 278 —सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि केन्द्रीय सरकार द्वारा मैसर्स डी. सी. एम. हाऊसिंग फाइनेंस लि., प्रथम तल, कंचन जंगा, 18, बाराखम्बा रोड, नई दिल्ली—110001 को आयकर अधिनियम, 1961 की धारा 36 (1) (viii) के प्रयोजनार्थ कर निर्धारण वर्ष 1997-98 से 1999-2000 तक के लिए हाऊसिंग फाइनेंस कम्पनी के रूप में अनुमोदित किया जाता है।

2. यह अनुमोदन इस शर्त पर किया गया है कि कम्पनी आयकर अधिनियम, 1961 की धारा 36 (1) (viii) के उपबंधों के अनुरूप होगी और उनका अनुपालन करेगी।

[अधिसूचना सं. 10518/फा.स. 204/42/95—आयकर नि.-II]

मालथी आर. श्रीधरन, अवर सचिव

MINISTRY OF FINANCE
(Department of Revenue)
CENTRAL BOARD OF DIRECT TAXES
New Delhi, the 28th January, 1998

S.O. 278.—It is notified for general information that M/s. D.C.M. Housing Finance Ltd., Ist Floor, Kanchenjunga, 18, Barakhamba Road, New Delhi-110001 has been approved by the Central Government as a Housing Finance Company for the purposes of Section 36(1)(viii) of the Income Tax Act 1961, for the assessment years 1997-98 to 1999-2000.

The approval is subject to the condition that the company will conform to and comply with the provisions of Section 36(1)(viii) of the Income-tax Act, 1961.

[Notification No. 10518/F. No. 204/42/95-ITA II.]

MALATHI R. SRIDHARAN, Under Secy.

नई दिल्ली, 28 जनवरी, 1998

का. आ. 279 :—सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि सचिव, पर्यावरण और वन मंत्रालय, भारत सरकार, नई दिल्ली जो कि आयकर अधिनियम, 1961 की धारा 35 खण्ड के प्रयोजनार्थ, आयकर नियमावली, 1962 के नियम 6 कक्क के अन्तर्गत विहित प्राधिकारी है, द्वारा निम्नलिखित संस्था/संघ और उसके नीचे दिए गए कार्यक्रम को अनुमोदित किया गया है।

संस्था/संघ का नाम

मैसर्स वनाराय
विजयनगर, पुणे—400001

कार्यक्रम

प्राकृतिक संसाधनों का संरक्षण

2. विहित प्राधिकारी द्वारा दिए गए दोनों अनुमोदन अर्थात (i) संस्था/संघ को धारा 35 खण्ड की उपधारा (2) के अन्तर्गत और (ii) धारा 35 खण्ड की उपधारा (1) के अन्तर्गत इसके कार्यक्रमों के लिए दिए गए अनुमोदन निम्नलिखित शर्तों के अधीन दिनांक 1-4-97 से 31-3-1998 तक की अवधि के लिए वैध होंगे :—

(1) मैसर्स वनाराय, विजयनगर, पुणे द्वारा अपने उपरोक्त संरक्षण कार्यकलापों के लिए प्राप्त किए गए दानों का एक अलग खाता रखा जाएगा।

(2) मैसर्स वनाराय वित्त वर्ष 1997-98 के लिए अपने संरक्षण कार्यक्रमों पर किए गए कार्य की प्रगति रिपोर्ट 31-3-1998 तक विहित प्राधिकारी को अवश्य प्रस्तुत करेगा।

(3) वनाराय वित्त वर्ष 1997-98 के लिए कुल आय तथा देनदारियों को दर्शाते हुए वार्षिक खातों की लेखा-परीक्षा रिपोर्ट 31-3-1998 तक विहित प्राधिकारी को प्रस्तुत करेगा और इन प्रत्येक दस्तावेजों की एक प्रति संबंधित आयकर आयुक्त को भेजी जाए।

(4) मैसर्स वनाराय पर्यावरण और वन मंत्रालय के दिनांक 24-4-1997 के पत्रांक 26-21/90 ई आई (ई) में निर्दिष्ट अपेक्षाओं का अनुपालन करेगा और आवश्यक प्रगति रिपोर्ट प्रस्तुत करेगा।

(5) यह अनुमोदन विहित प्राधिकारी की पूर्ण संतुष्टि पर दिया जाता है और यदि आवश्यक समझा गया तो इसे भूतलक्षी प्रभाव से वापस लिया जा सकता है।

[अधिसूचना सं. 10519/फा. सं. 203/21/97-आयकर बी०II]

मालथी आर. श्रीधरन, अवर सचिव

New Delhi, the 28th January, 1998

S.O. 279.—It is notified for general information that the Institution/Association mentioned below and its programme given hereunder have been approved by the Secretary, Ministry of Environment and Forests, Government of India, New Delhi, being the prescribed authority under rule 6AAC of the Income-tax, Rules, 1962, for the purposes of Section 35CCB of Income-tax Act, 1961.

Name of the Institution/Association :

M/s. Vanarai,
Vijaynagar, Pune-400 001.

Programme :

Conservation of natural resources.

2. Both the approvals accorded by the Prescribed Authority namely (i) to the Institution/Association under sub-section (2) of Section 35CCB and (ii) to the programmes under sub-section (1) of Section 35CCB are valid for the period from 1st April, 1997 to 31st March, 1998 with the following conditions :

(i) M/s. Vanarai, Vijyanagar, Pune, shall maintain a separate account of the donations received by it for its conservation activities mentioned above.

(ii) M/s. Vanarai shall furnish progress report work done on their conservation programmes to the prescribed authority for the financial year 1997-98 by 31st March, 1998 positively.

(iii) The Vanarai shall submit to the prescribed authority by the 31st March, 1998 annual audit/accounts report for the year 1997-98 showing total income and liabilities and a copy of each of these documents be sent to the concerned Commissioner of Income-tax.

(iv) M/s. Vanarai shall comply with the requirements stipulated in the letter No. 26-21/90-EI(E) dated 24th April, 1997 of Ministry of Environment and Forest and submit the necessary progress report.

(v) The approval is subject to the condition satisfaction of the prescribed authority and may be withdrawn with retrospective effect, if considered necessary.

[Notification No. 10519/F. No. 203/21/97-ITA II]

MALATHI R. SRIDHARAN, Under Secy.

नई दिल्ली, 28 जनवरी, 1998

का. आ. 280.—सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि सचिव, पर्यावरण और वन मंत्रालय, भारत सरकार, नई दिल्ली जो कि आयकर अधिनियम, 1961 की धारा 35सगघ के प्रयोजनार्थ, आयकर नियमावली, 1962 के नियम 6कक्क के अन्तर्गत विहित प्राधिकारी है द्वारा निम्नलिखित संस्था/संघ और उसके नीचे दिए गए कार्यक्रमों को अनुमोदित किया गया है ।

संस्था/संघ का नाम

मैसर्स ग्रीन रे फाउंडेशन,
पी-6, कलनगुटी रोड, पोटहिस वड्डो,
वेरेम-गोवा—403114

कार्यक्रम

(i) ग्रीन रे फाउंडेशन द्वारा अधिगृहीत 3.5 हेक्टेयर की पूर्णत: बंजर भूमि में वनरोपण ।

(ii) भूमि की परिस्थितियों को मद्देनजर रखते हुए स्थानीय उपयुक्तता के पौधों की प्रजातियों सहित उपयुक्त बंजर भूमि का सुधार करना ।

(iii) प्राकृतिक संसाधनों के बेहतर प्रबंधन के लिए नीतियों का विकास और उनका प्रदर्शन ।

(iv) पानी के संरक्षण के लिए मिट्टी के बान्ध/झील बनाना और विंग मिल स्थापित करना ।

2. विहित प्राधिकारी द्वारा दिए गए दोनों अनुमोदन अर्थात् (i) संस्था/संघ की धारा 25सग ख की उपधारा (2) के अन्तर्गत और (ii) धारा 35सग ख की उपधारा (1) के अन्तर्गत उपरोक्त कार्यक्रमों के लिए दिए गए अनुमोदन निम्नलिखित शर्तों के अधीन दिनांक 1-4-97 से 31-3-2000 तक तीन वर्षों की अवधि के लिए वैध होंगे :—

1. मैसर्स ग्रीन रे फाउंडेशन, पी-6, कलनगुटी रोड, पोटहिस वड्डो, वेरेम-गोवा—403114 द्वारा संरक्षण कार्यकलापों के लिए प्राप्त किए गए दानों का एक अलग खाता रखा जाएगा ।

2. मैसर्स ग्रीन रे फाउंडेशन, पी-6, कलनगुटी रोड, पोटहिस वड्डो वेरेम—गोवा—403114 संरक्षण कार्यक्रमों के बारे में प्रत्येक वर्ष की प्रगति रिपोर्ट वित्तवर्ष 30 जून तक विहित प्राधिकारी को प्रस्तुत करेगा ।

3. मैसर्स ग्रीन रे फाउंडेशन, पी—6, कलनगुटी रोड, पोटहिस वड्डो, वेरेम-गोवा—403114 कुल आय तथा देनदारियों को दर्शाते हुए वार्षिक खाते को 30 जून, तक विहित प्राधिकारी को प्रस्तुत करेगा और इन प्रत्येक दस्तावेजों की एक प्रति संबंधित आयकर आयुक्त को भेजी जाए ।

4. मैसर्स ग्रीन रे फाउंडेशन, पी-6, कलनगुटी रोड पोटहिस वड्डो, वेरेम-गोवा—403114, को यह अनुमोदन विहित प्राधिकारी की पूर्ण संतुष्टि पर दिया जाता है और यदि आवश्यक समझा गया तो इस भूतलक्षी प्रभाव से वापस लिया जा सकता है ।

[अधिसूचना सं. 10521/फा. सं. 203/36/97-आयकर नि.-II]

मालथी आर. श्रीधरन, अवर सचिव

New Delhi, the 28th January, 1998

S.O. 280.—It is notified for general information that the Institution/Association mentioned below and its programme given hereunder have been approved by the Secretary, Ministry of Environment and Forests, Government of India, New Delhi, being the prescribed authority under the Rule 6AAC of the Income-tax Rules, 1962, for the purposes of Section 35CCB of the Income-tax Act, 1961.

Name of the Institution/Association :

M/s. Green Ray Foundation,
P-6, Calanguti Road, Portais Vaddo,
Verem-Goa-403 114.

Programme :

(i) Afforestation of severely denuded stretch of 3.5 Ha. of land acquired by Green Ray Foundation.

(ii) Recovery of the above wasteland with plant species of local suitability taking into the account the soil conditions.

(iii) Development and demonstration of strategies for a better management of natural resources.

(iv) Formation of Earthen Dam/Lake for water conservation and establishing wing-mill.

2. Both the approvals accorded by the Prescribed Authority namely (i) to the Institution/Association under sub-section (2) of Section 35CCB and (ii) to the programmes under sub-section (1) of Section 35CCB are valid for a period of three years with effect from 1st April, 1997 to 31st March, 2000 subject to the following conditions :

1. M/s. Green Ray Foundation, P-6, Calanguti Road, Portais Vaddo, Verem-Goa-403 114 shall maintain a separate account of the donations received by it for conservation activities.

2. M/s. Green Ray Foundation, P-6, Calanguti Road, Portais Vaddo, Verem-Goa-403 114 shall furnish progress report of the conservation programmes to the prescribed authority for every financial year by 30th June every year.

3. M/s. Green Ray Foundation, P-6, Calanguti Road, Portais Vaddo, Verem-Goa-403 114 shall submit to the prescribed authority by 30th June annual account showing total income and liabilities and a copy of each of these documents sent to the concerned Commissioner of Income-tax.

4. M/s. Green Ray Foundation, P-6, Calanguti Road, Portais Vaddo, Verem-Goa-403 114 the approval is subject to the continued satisfaction of the prescribed authority and may be withdrawn with retrospective effect, if considered necessary.

[Notification No. 10521/F. No. 203|36|97-ITA.II]
MALATHI R. SRIDHARAN, Under Secy.

नई दिल्ली, 28 जनवरी, 1998

का.आ. 281.—सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि सचिव, पर्यावरण और वन मंत्रालय, भारत सरकार, नई दिल्ली जो कि आयकर अधिनियम, 1961 की धारा 35 गगख के प्रयोजनार्थ, आयकर नियमावली, 1962 के नियम 6ककग के अन्तर्गत विहित प्राधिकारी है, द्वारा निम्नलिखित संस्था/संघ और उसके नीचे दिए गए कार्यक्रम को अनुमोदित किया गया है ।

संस्था/संघ का नाम

मैसर्स गुजरात परिस्थितिकीय शिक्षा और अनुसंधान फाउंडेशन, जी-1, 194/3, सैक्टर-36, गांधी नगर-382030 (गुजरात) ।

कार्यक्रम

(i) इन्डरोडा नेचर पार्क के क्षेत्रों में तथा हिन्गोलगढ़ नेचर शिक्षा सैंक्च्युअरी में भूमि आर्द्रता सरक्षण कार्य और बड़े पैमाने पर वृक्षारोपण कार्य ।

(ii) इन्डरोडा नेचर पार्क तथा हिन्गोलगढ़ सैंक्च्युअरी के सम्पूर्ण क्षेत्र में तथा इन सैंक्च्युअरियों के समीपवर्ती इलाके में परिस्थितिकीय विकास ।

(iii) इन्डरोडा नेचर पार्क में नेचुर हिस्ट्री म्युजियम की स्थापना ।

(iv) नेचर एजूकेशन कैम्पस एवं मोबाइल नेचर एजूकेशन सेन्टर के माध्यम से संरक्षण जागरूकता उत्पन्न करना ।

(v) लायन सफारी पार्क, टाइगर सफारी पार्क आदि की स्थापना सहित पशुओं और पक्षियों की संकटपन्न विभिन्न प्रजातियों का बंधित रूप से प्रजनन शुरू करना ।

2. विहित प्राधिकारी द्वारा दिए गए दोनों अनुमोदन अर्थात् (i) संस्था/संघ की धारा 35 गगख की उपधारा (2) के अन्तर्गत और (ii) धारा 35गगख की उपधारा (i) के अन्तर्गत इसके कार्यक्रमों के लिए दिये गये अनुमोदन निम्नलिखित शर्तों के अधीन दिनांक 1-4-97 से 31 3-2000 तक तीन वर्षों की अवधि के लिए वैध होंगे ।

1. गुजरात परिस्थितिकीय शिक्षा और अनुसंधान फाउंडेशन द्वारा अपने संरक्षण कार्यकलापों के लिए प्राप्त किये गये दानों का एक अलग खाता रखा जाएगा ।

2. गुजरात पारिस्थितिकीय शिक्षा औरर अनुसंधान फाउंडेशन संरक्षण कार्यक्रमों के बारे में प्रत्येक वित्त वर्ष हेतु प्रगति रिपोर्ट प्रति वर्ष 30 जून तक विहित प्राधिकारी को प्रस्तुत करेगा ।

3. गुजरात पारिस्थितिकीय शिक्षा और अनुसधान फाउंडेशन कुल आय और देनदारियों को दर्शाते हुए वार्षिक खाते को 30 जून तक विहित प्राधिकारी को प्रस्तुत करेगा और इन प्रत्येक दस्तावेजों की एक प्रति संबधित आयकर आयुक्त को भेजी जाए ।

4. यह अनुमोदन विहित प्राधिकारी की पूर्ण संतुष्टि पर दिया जाता है और यदि आवश्यक समझा गया तो इसे भूतलक्षी प्रभाव से वापस लिया जा सकता है।

अधिसूचना स. 10520/फा. सं. 203/35/97/आकयर नि.-II]
मालथी आर श्रीधरन, अवर सचिव

New Delhi, the 28th January, 1998

S.O. 281.—It is notified for General information that the Institution/Association mentioned below and its programme given hereunder have been approved by the Secretary, Ministry of Environment and Forests, Government of India, New Delhi, being the prescribed authority under the Rule 6AAC of the Income-tax Rules, 1962, for the purposes of Section 35CCB of the Income-tax Act, 1961.

Name of the Institution/Association :

M|s. Gujarat Ecological Education and Research Foundation (GEER),
G-1, 194/3, Sector-36, Gandinagar-382030 (Gujarat).

Programme :

(i) Soil moisture conservation works and massive tree planting work in the areas of Indroda Nature Park and in Hingolgadh Nature Education Sanctuary.

(ii) Eco-development of entire area of Indroda Nature Park and Hingolgadh Sanctuary as well as in the area surrounding the sanctuaries.

(iii) Establishment of Natural History Museum at Indroda Nature Park.

(iv) Raising Conservation awareness through Nature Education Camps and Mobile Nature Education Centre.

(v) Taking up captive breeding of various endangered species of animals and birds including establishing Lion Safari Park, Tiger Safari Park etc.

2. Both the approvals accorded by the Prescribed Authority namely (i) to the Institution/Association under sub-section (2) of Section 35CCB and (ii) to the programme under sub-section (1) of Section 35CCB are valid for a period of three years from 1-4-1997 to 31-3-2000, subject to the following conditions :

1. Gujarat Ecological Education and Research Foundation (GEER) shall maintain a separate account of the donations received by it for conservation activities.

2. Gujarat Ecological Education and Research Foundation (GEER) shall furnish progress report for the conservation programmes to the prescribed authority for every financial year by 30th June, every year.

3. Gujarat Ecological Education and Research Foundation (GEER) shall submit to the prescribed authority by the 30th June, annual account showing total income and liabilities and a copy of each of these documents sent to the concerned Commissioner of Income-tax.

4. The approval is subject to the continued satisfaction of the prescribed authority and may be withdrawn with retrospective effect, if considered necessary.

[Notification No. 10520/F. No. 203/35/97/ITA.II]
MALATHI R. SRIDHARAN, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 22 जनवरी, 1998

का.आ. 282—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा (1) के उपबंध, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से 31 मार्च, 1998 तक की अवधि के लिए दि मयूरगंज केन्द्रीय सहकारी बैंक लि. बैरीपाड़ा (उड़ीसा) पर लागू नहीं होंगे ।

[फ. एफ. 1(19)/95/ए. सी.)]
एस. के. ठाकुर, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 22nd January, 1998

S.O. 282.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to The Mayurbhanj Central Co-operative Bank Ltd., Baripada (Orissa) from the date of publication of this notification in the official Gazette to 31st March, 1998.

[F. No. 1(19)/95-AC]
S. K. THAKUR, Under Secy.

नई दिल्ली, 22 जनवरी, 1998

का.आ. 283—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1980 के खंड 3 के उप खंड (1) के साथ पठित बैंककारी कम्पनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1980 की धारा 9 की उपधारा 3 के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा श्री आर. एस. वेंकटनावर, मुख्य महा प्रबंधक, भारतीय रिजर्व बैंक, हैदराबाद को श्री आर. नान्जप्पा के स्थान पर, आन्ध्र बैंक का निदेशक नामित करती है ।

[फ. सं. 9/18/95 बी. ओ.-I]
के. के. मंगल, अवर सचिव

New Delhi, the 22nd January, 1998

S.O. 283.—In exercise of the powers conferred by clause (c) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 read with sub-clause (1) of clause 3 of the Nationalised Banks

(Management and Miscellaneous Provisions) Scheme, 1980, the Central Government hereby nominates Shri R. S. Bakkannavar, Chief General Manager, Reserve Bank of India, Hyderabad as a Director of Andhra Bank vice Shri R. Nanjappa.

[F. No. 9/18/95-B.O.I.]
K. K. MANGAL, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 14 जनवरी, 1998

का.आ. 284.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद् से परामर्श के पश्चात् उक्त अधिनियम की प्रथम अनुसूची में और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :—

उक्त प्रथम अनुसूची में :—

(1) "बंगलौर विश्वविद्यालय" के सामने, "मान्यता प्राप्त आयुर्विज्ञान अर्हता, स्तम्भ में [जिसे इसमें इसके पश्चात् स्तम्भ (2) कहा गया है], डाक्टर ऑफ मेडिसन (एवियेशन आयुर्विज्ञान) "प्रविष्टि और रजिस्ट्रीकरण के लिए संक्षेपाक्षर" स्तम्भ में (जिसे इसमें इसके पश्चात् स्तम्भ (3) कहा गया है) उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्त. स्थापित किया जाएगा, अर्थात् :—

मान्यता प्राप्त आयुर्विज्ञान अर्हता	रजिस्ट्रीकरण के लिए संक्षेपाक्षर
(2)	(3)
"डाक्टर ऑफ मेडिसन (हृदय विज्ञान)	डी० एम० (हृदय विज्ञान) (जब 1985 को या उसके पश्चात् प्रदत्त की गई, तब यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी) ;

(2) "कलकत्ता विश्वविद्यालय" के सामने, स्तम्भ (2) में, "डाक्टर ऑफ मेडिसन (न्याय-आयुर्विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्त. स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर ऑफ मेडिसन (तंत्रिका विज्ञान)	डी. एम (तंत्रिका विज्ञान) (जब जून, 1977 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी)" ;
डाक्टर ऑफ मेडिसन (जीव-रसायन विज्ञान)	एम डी (जीव रसायन विज्ञान) (जब अप्रैल, 1980 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता प्राप्त अर्हता होगी)" ;

(3) "चौधरी चरणसिंह विश्वविद्यालय" के सामने, स्तम्भ (2) में, "मास्टर ऑफ सर्जरी (नेत्र रोग विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्त. स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"बिक्लांग विज्ञान में डिप्लोमा	डी आर्थो (जब जनवरी, 1994 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी)" ;

(4) "कालिकट विश्वविद्यालय" के सामने स्तम्भ (2) में मास्टर ऑफ सर्जरी (वक्ष-शल्य विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्त. स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"मास्टर ऑफ सर्जरी (कान, नाक और गला)	एम एस (कान, नाक और गला) (जब 1982 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता प्राप्त अर्हता होगी)
कर्णपटल विज्ञान में डिप्लोमा	डी एल ओ (जब 1977 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी)" ,

(5) "दिल्ली विश्वविद्यालय" के सामने स्तम्भ (2) में, "डाक्टर ऑफ मेडिसिन (मनोविकृति विज्ञान)" प्रविष्टि के सामने स्तम्भ (3) प्रविष्टि में "1987" अंक के स्थान "मई, 1985" शब्द और अंक रखे जाएंगे ;

(6) "गुवाहाटी विश्वविद्यालय" के सामने स्तम्भ (2) में, डाक्टर ऑफ मेडिसन (शुभ जीव विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्त. स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर ऑफ मेडिसन (त्वचा विज्ञान और स्त्री रोग विज्ञान)	एम डी त्वचा विज्ञान स्त्री और रोग विज्ञान) (जब दिसम्बर, 1990 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता प्राप्त अर्हता होगी)" ;

(7) "गुजरात विश्वविद्यालय" के सामने, स्तम्भ (2) में, "डाक्टर ऑफ मेडिसिन (न्याय आयुर्विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
मैजिस्टर चिरूरजी (तंत्रिका शल्य विज्ञान)	एम० चि० (तंत्रिका शल्य विज्ञान) जब 1990 को या उसके पश्चात् प्रदत्त की गई तब एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन	डी० एम० (आयुर्विज्ञान अर्बुद-विज्ञान) (जब 1993 को या उसके पश्चात् प्रदत्त की गई तब एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)" ;

(8) "गुलबर्गा विश्वविद्यालय" के सामने स्तम्भ (2) में, "डाक्टर ऑफ मेडिसिन (न्याय आयुर्विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"मास्टर ऑफ सर्जरी (शरीर रचना विज्ञान)	एम. एस. (शरीर रचना विज्ञान) (जब नवम्बर, 1983 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त अर्हता होगी)" ;

(9) "गोवा विश्वविद्यालय" शीर्षक के सामने, स्तम्भ (2) में, मास्टर आफ सर्जरी (शरीर रचना विज्ञान)" प्रविष्टि और स्तम्भ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
संवेदनाहरण विज्ञान में डिप्लोमा	डी. ए. (जब फरवरी, 1989 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यताप्राप्त अर्हता होगी)"

(10) "पंडित भगवत दयाल शर्मा विश्वविद्यालय" के सामने, स्तंभ (2) में, "स्त्री रोग विज्ञान और प्रसूति विज्ञान में डिप्लोमा" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (विकिरण चिकित्सा पद्धति)	डी. एम. (विकिरण चिकित्सा पद्धति) (जब अक्तूबर, 1976 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता-प्राप्त अर्हता होगी)
डॉक्टर आफ मेडिसन (विकिरण चिकित्सा विज्ञान)	एम. डी. (विकिरण चिकित्सा विज्ञान) (वर्ष 1974 से 1988 के दौरान यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)" ;

(11) "कर्नाटक विश्वविद्यालय" के सामने, स्तंभ (2) में "डाक्टर आफ मेडिसिन (विकृति विज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (चर्म, चर्म टी. रोग और कुष्ठ रोग)	एम. डी. (चर्म, चर्म टी. रोग और कुष्ठ रोग) (जब अगस्त, 1989 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त अर्हता होगी)
चर्म विज्ञान, जिसके अन्तर्गत रतिज रोग और कुष्ठ रोग भी है, में डिप्लोमा	डी. बी. डी. (जब अगस्त, 1989 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यताप्राप्त आयु-विज्ञान अर्हता होगी)
डाक्टर इन मेडिसन (न्याय आयुर्विज्ञान)	एम. डी. (न्याय आयुर्विज्ञान) (जब अगस्त, 1991 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
न्याय आयुर्विज्ञान में डिप्लोमा और कुष्ठ रोग	डी. एम. एस. (जब फरवरी, 1985 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)" ;

(12) "कुवेम्पु विश्वविद्यालय" के सामने, स्तंभ (2) में, "विकृतांग विज्ञान में डिप्लोमा" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसन (संवेदनाहरण विज्ञान)	एम. डी. (संवेदनाहरण विज्ञान) (जब 1992 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयु-विज्ञान अर्हता होगी)" ;
संवेदनाहरण विज्ञान में डिप्लोमा	डी. ए. (जब 1992 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।

(2)	(3)
डाक्टर आफ मेडिसन (बाल चिकित्सा विज्ञान)	एम. डी. (बाल चिकित्सा विज्ञान) (जब 1992 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी।
बाल स्वास्थ्य विज्ञान में डिप्लोमा	डी. सी. एच. (जब 1992 को या उसके पश्चात् प्रदत्त किया गया तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।
डॉक्टर आफ मेडिसिन (विकृति विज्ञान)	एम. डी. (विकृति विज्ञान) (जब 1992 को यह उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।

(13) "लखनऊ विश्वविद्यालय" के सामने, स्तंभ (2) में "डॉक्टर ऑफ मेडिसिन (विकिरण चिकित्सा पद्धति)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तः स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर ऑफ मेडिसिन (तंत्रिका विज्ञान)	डी. एम. (तंत्रिका विज्ञान) (जब 1983 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।
डाक्टर ऑफ मेडिसिन (यक्ष्मा और वक्ष रोग)	एम. डी. (यक्ष्मा और वक्ष रोग) (जब 7 फरवरी, 1986 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।
डाक्टर ऑफ मेडिसिन (यक्ष्मा और श्वसन रोग)	एम. डी. (यक्ष्मा और श्वसन रोग) (जब 26 अप्रैल, 1992 को या उसके पश्चात् प्रदत्त की गई हो तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)"।

(14) "मद्रास विश्वविद्यालय" के सामने, स्तंभ (2) में, "डाक्टर ऑफ मेडिसिन (जठरांत्र रोग विज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तः स्थापित किया जाएगा अर्थात् :—

(2)	(3)
"डॉक्टर आफ मेडिसिन (सूक्ष्म जीव विज्ञान)	एम. डी. (सूक्ष्मजीव विज्ञान) (जब 1980 को या उसके पश्चात् प्रदत्त की गई, तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।" ;

(15) "डा. एम. जी. आर. आयुर्विज्ञान विश्वविद्यालय, मद्रास" के सामने, स्तंभ (2) में," डाक्टर आफ मेडिसिन (गठिया रोग विज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा ; अर्थात् :—

(2)	(3)
"मैजिस्टर चिरूरजी (शल्य जठरांत्र विज्ञान)	एम. चि. (शल्य जठरांत्र विज्ञान) (जब 1986 को या उसके पश्चात् प्रदत्त की जाएगी, तब यह एक मान्यताप्राप्त आयुर्विज्ञान चिकित्सा होगी)।
डाक्टर आफ मेडिसिन (सूक्ष्म जीवविज्ञान)	एम. डी. (सूक्ष्म जीव विज्ञान) (जब 1980 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)" ;

(16) "मनिफाल उच्चतर शिक्षा अकादमी" के सामने स्तंभ (2) में "मैजिस्टर चिरूरजी (हृदय, वक्ष शल्य चिकित्सा)' प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तः स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
डाक्टर आफ मेडिसिन (सामाजिक आयुर्विज्ञान)	एम. डी. (सामाजिक आयुर्विज्ञान) (जब जून, 1990 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन (भेषज विज्ञान)	एम. डी. (भेषज विज्ञान) (जब जनवरी, 1974 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
मास्टर आफ सर्जरी (कान, नाक और गला)	एम. एस. (कान, नाक, गला) (जब 1974 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।
श्रवणविज्ञान में डिप्लोमा	डी. एल. ओ. (जब 1972 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन (चर्म और रतिरोग)	एम. डी. (चर्म और रतिरोग) (जब 1979 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।

(2)	(3)
त्वचा विज्ञान और रति-रोग विज्ञान में डिप्लोमा	डी. वी. डी. (जब 1974 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)

(17) "मंगलौर विश्वविद्यालय" के सामने, स्तंभ (2) में, "मैजिस्टर चिरूर्जी (हृदय, वक्ष शल्य चिकित्सा)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

2	3
"डाक्टर आफ मेडिसिन (भेषज विज्ञान)	एम. डी. (भेषज विज्ञान) (जब जनवरी, 1974 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त अर्हता होगी)
डाक्टर आफ मेडिसिन (चर्म और रतिरोग)	एम. डी. (चर्म और रतिरोग) (जब 1979 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
त्वचा विज्ञान, जिसके अन्तर्गत रतिरोग और कुष्ठरोग भी हैं में डिप्लोमा	त्वचाविज्ञान में डिप्लोमा (जब 1974 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
मास्टर आफ सर्जरी (कान, नाक, गला)	एम. एस. (कान, नाक, गला) (जब 1972 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
श्रवण विज्ञान में डिप्लोमा	डी. एल. ओ (जब जून, 1972 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
नेत्र आयुर्विज्ञान और शल्य चिकित्सा में डिप्लोमा	डी. ओ. एम. एस. (जब 1971 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी) ।
नेत्र विज्ञान में डिप्लोमा	डी. ओ. (जब 1971 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)

(18) "मेरठ विश्वविद्यालय" के सामने, स्तंभ (2) में, "मास्टर आफ सर्जरी (नेत्रविज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"विकृतांग विज्ञान में डिप्लोमा	डी. ओर्थो० (जब 1976 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी) ।

(19) "निजाम आयुर्विज्ञान संस्थान, हैदराबाद" के सामने, स्तंभ (2) में "डाक्टर आफ मेडिसिन (अस्पताल प्रशासन)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (हृदय विज्ञान)	डी. एम. (हृदय विज्ञान) (जब फरवरी 1992 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन (संवेदनाहरण विज्ञान)	एम. डी. (संवेदनाहरण विज्ञान) (जब सितम्बर, 1993 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन (सामान्य आयुर्विज्ञान)	एम. डी. (सामान्य विज्ञान) (जब मई, 1994 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी) "

(20) "महर्षि दयानन्द विश्वविद्यालय" के सामने स्तंभ (2) में "डाक्टर आफ मेडिसिन (यक्ष्मा और वक्ष रोग)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
डाक्टर आफ मेडिसिन (विकिरण चिकित्सा पद्धति)	एम. डी. (विकिरण चिकित्सा पद्धति) (जब नवम्बर, 1991 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)

(21) "गोरखपुर विश्वविद्यालय" के सामने, स्तंभ (2) में "डाक्टर आफ मेडिसिन (जीवरसायन विज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (यक्ष्मा और वक्ष रोग)	एम. डी. (यक्ष्मा और वक्ष रोग) (जब 1981 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)

(22) "संजयगांधी स्नातकोत्तर संस्थान" लखनऊ के सामने स्तंभ (2) में "मैजिस्टर चिकित्सा (तंत्रिका शल्य)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डाक्टर आफ मेडिसिन (तंत्रिका विज्ञान)	एम. डी. (तंत्रिका विज्ञान) (जब मई, 1992 को या उसके पश्चात प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)
डाक्टर आफ मेडिसिन (हृदय विज्ञान)	डी. एम. (हृदय विज्ञान) (जब 1992 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)

(23) "शिवाजी विश्वविद्यालय" के सामने स्तंभ (2) में "डाक्टर आफ मेडिसिन (सामान्य आयुर्विज्ञान)" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
डाक्टर आफ मेडिसिन (भेषज विज्ञान)	एम. डी. (भेषज विज्ञान) (जब जनवरी, 1994 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।

(24) "गुजरात विश्वविद्यालय" के सामने, स्तंभ (2) में, "नैदानिक (विकृति विज्ञान) में डिप्लोमा" प्रविष्टि और स्तंभ (3) में उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

(2)	(3)
डाक्टर आफ मेडिसिन (न्याय आयुर्विज्ञान)	एम. डी. (न्याय आयुर्विज्ञान) (जब फरवरी, 1987 को या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी)।
डाक्टर आफ मेडिसिन (भेषज विज्ञान)	डी. एम. (भेषज विज्ञान) (जब जून, 1981 या उसके पश्चात् प्रदत्त की गई तब यह एक मान्यताप्राप्त अर्हता होगी)।

[सं. वी. 11013/1/96—एम. ई. (यू. जी.)]

एम. के मिश्रा, डैस्क अधिकारी

MINISTRY OF HEALTH & FAMILY WELFARE

(Department of Health)

New Delhi, the 14th January, 1998

S. O. 284.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government after consulting the Medical Council of India makes the following further amendments in the First Schedule to the said Act, namely :—

In the said, First Schdule.—

(1) Against the 'Bangalore University' in the column "Recognised Medical Qualification" [hereinafter referred to as column (2)] after the entry Doctor of Medicine (Aviation Medicine) and the entry relating thereto in the column "Abbreviation for registration" [hereinafter referred to as column (3)] the following shall be inserted, namely :—

2	3
Doctor of Medicine (Cardiology)	D.M. (Cardiology) (This shall be a recognised medical qulaification when granted on or after 1985).

(2) Against the "University of Calcutta" in column (2) after the entry "Doctor of Medicine (Forensic Medicine)" and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
Doctor of Medicine (Neurology)	D.M. (Neurology) (This shall be a recognised qualification when granted on or after June, 1977).
Docotr of Medicine (Biochemistry)	M.D. (Bio-chemistry) (This shall be a recognised qualification when granted on or after April 1980)."

(2)	(3)

(3) Against the "Choudhary Charan Singh University" in column (2) after the entry "Master of Surgery (Ophthalmology)" and the entry relating thereto in column (3) the following shall be inserted, namely :—

(2)	(3)
"Diploma in Orthopaedics.	D.Ortho. (This shall be a recognised medical qualification only when granted on or after January, 1994)".

(4) Against the "Calicut University " in column (2) " Recognised Medical Qualification after the entry "Master of Surgery (Thoracic Surgery) and the entry relating theret o in column (2) "Abbreviation for registration" the following shall be inserted, namely :—

(2)	(3)
"Master of Surgery (FNT)	M.S. (Ent) (This shall be recognised qualification when granted on or after 1982.)
Diploma in Otolaryangology	D.L.O. (This shall be recognised medical qualification when granted on or after 1977)".

(5) Against the "University of Delhi" in column (2) against the entry "Doctor of Medicine" (Psychiatry), in column (3) in the entry, for the figures "1987" the word and figure "May, 1985" shall be substituted.

(6) against the "University of Guwahati" in column (2), after the entry "Doctor of Medicine (Microbiology)" and the entry relating thereto in column (3), the following shall be inserted namely :—

(2)	(3)
"Doctor of Medicine (Dermatology and Venerology)	M.D. (Dermatology and Venereology) (This shall be a recognised qualification when granted on or after December, (1990)".

(7) against the "Gujarat University", in column (2), after the entry "Doctor of Medicine (Forensic Medicine and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Magister Chiruegiaes (Surgical Oncology)	M. Ch. (Surgical Oncology) (This shall be a recognised Medical qualification when granted on or after 1990.
Doctor of Medicine (Medical Oncology)	D.M. (Medical Oncology) (This shall be recognised medical qualification when granted on or after 1993)"

(8) against the "Gulbarga University", in column (2), after the entry "Doctor of Medicine (Forensic Medicine)" and the entry relating thereto in column (3), the following shall be inserted mamely :—

(2)	(3)
"Master of Surgery (Anatomy)	M.S. (Anatomy) (This shall be a recognised qulaification when granted on or after November, 1983)."

(9) against the heading "Goa University" in column (2) after the entry "Master of Surgery (Anatomy)" and the entry relating there to in column (3), the following shall be inserted namely :—

(2)	(3)
"Diploma in Anaesthesiology	D.A. (This shall be a recognised qualification when granted on or after February, 1989)

(10) against the "Devi Ahilya Vishwa Vidyalaya"' in column (2) after the entry "Diploma in Gynaecology and Obstetrics and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Radiotherapry)	M.D. (Radiotherapy) (This shall be a recognised medical qualification when granted on or after October, 1976).
Doctor of Medicine (Radiology)	M.D. (Radiology) This shalll be a recognised medcial qualification during the year 1974 to 1988)".

(11) against the "University of Karnataka" in column (2), after the entry "Doctor of Medicine (Pathology)" and the enrty relating thereto in column (3), the following shall be inserted namely :—

(2)	(3)
"Doctor of Medicine (Skin. & STD and Lep).	M.D. (Skin, STD, & Lep. (This shall be a recognised qualification when granted on or after August, 1989).

(2)	(3)
Diploma in Dermatology including Venereal diseases & Leprosy.	D.V.D. (This shall be a recognised medical qualification when granted on or after August, 1989).
Doctor in Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognised medical qualification when granted on or after August, 1991).
Diploma in Forensic Medicine	D.F.M. (This shall be a recognised medical qualification when granted on or after February, 1985)"

(12) Against the "Kuvempu University" in column (2), after the entry "Diploma in Orthopaedics" and the entry relating thereto in coumn (3), the following shall be inserted namely :—

(2)	(3)
"Doctor of Medicine (Anaes.)	M.D. (Anaesthesiology) (This shall be a recognised medical qualification when granted on or after 1992)
Diploma in Anaesthesiology)	D. A. (This shalll be a recognised medical qualification when gsanted on or after 1992).
Doctor of Medicine (Paediatrics)	M.D. (Paediatrics) (This shall be a recognised medical qualification when granted on or after 1992).
Diploma in Child Health	D.C.H. (This shall be a recognised medical qualification when granted on or after 1992).
Doctor of Medicine (Pathology)	M.D. (Pathology) (This shall be a recognised medical qualification when granted on or after 1992)."

(13) Against the "University of Lucknow" in column (1) after the entry "Doctor of Medicine (Radio therapy)' and the entry thereto in column (2), the following shall be inserted namely :—

(2)	(3)
"Doctor of Medicine (Neurology)	D.M. (Neurology) (This shall be a recognised medical qualification when granted on or after 1983).
Doctor of Medicine (Tuberculosis and Chest Diseases	M.D. (T.B. and Chest Diseases (This shall be a recognised medical qualification when granted on or after 7th Februaty, 1986).
Doctor of-Medicine (Tuber & Resp. Diseases)	M.D. (T.B. & Resp. Disease) (This shall be recognised medical qualification when granted on or after 26th April, 1992).

(14) Against the "University of Madras" in column (2) after the entry "Doctor of Medicine (Gastroenterology)" and the entry relating thereto in column (3) shall be inserted namely :—

(2)	(3)
"Doctor of Medicine (Microbiology)	M.D. (Microbiology) (This shall be a recognised medical qualification when granted on or after 1980).

(15) Against the Dr. M.G.R. Medical University, Madras in column (2), after the entry Doctor of Medicines (Rheumatology)" and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
"Magister Chirugiae (Surgical Gastro entrology)	M. Ch. (Surgical Gastro-entrology) (This shall be a recognised medical qualification when granted on or after 1936).
Doctor of Medicine (Microbiology)	M.D. (Microbiology) This shall be a recognised medical qualification when granted on or after 1980").

(16) Against the "Manipal Academy of Higher Education", in column (2), after the entry "Magister Chirurgiae (Cardiothoracic Surgery)" and the entry relating thereto in column (2), the following shall be inserted namely :—

(2)	(3)
Doctor of Medicine (Community Med.)	M.D. (Community Medicine) (This shall be a recognised medical qualification when granted on or after June, 1990)
Doctor of Medicine (Pharmacology)	M.D. (Pharmacology) (This shall be a recognised medical qualification when granted on or after 1974)
Master of Surgery (E.N.T.)	M.S.(ENT) (This shall be a recognised medical qualification when granted on or after Jan. 1974)
Diploma in Otolaryngology)	D.L.O. (This shall be a recognised medical qualification when granted on or after 1972)
Doctor of Medicine (Skin & V.D.)	M.D. (Skin & V.D.) (This shall be a recognised medical qualification when granted on or after 1979)
Diploma in Dermatology and Venerology	D.V.D. (This shall be a recognised medical qualification when granted on or after 1974)"

(17) Against the "Mangalore University" in column (2), after the entry "Magister Chirurgine (Cardiothoracic Surgery)" and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
Doctor of Medicine (Pharmacology)	M.D. (Pharmacology) (This shall be a recognised medical qualification when granted on or after Jan., 1974)
Doctor of Medicine (Skin & V.D.)	M.D. (Skin & V.D.) (This shall be a recognised medical qualification when granted on or after 1979)
Diploma in Dermatology including Venereal Diseases & Laprosy.	D.V.D. (This shall be a recognised medical qualification when granted on or after 1974)
Master of Surgery (ENT)	M.S. (ENT) (This shall be a recognised medical qualification when granted on or after 1972)
Diploma in Otolaryngology	(D.L.O.) (This shall be a recognised medical qualification when granted on or after June, 1972).
Diploma in Ophthalmic Medicine and Surgery	D.O.M.S. (This shall be a recognised medical qualification when granted on or after 1971)
Diploma in Ophthalmology	D.O. (This shall be a recognised medical qualification when granted on or after 1971)

(18) Against the "Meerut University", in column (2), after the entry "Master of Surgery" (Opthalmology) and the entry relating thereto in column (3), the following shall be inserted, namely:—

(2)	(3)
Diploma in Orthopaedics	D. Ortho. (This shall be a recognised medical qualification when granted on or after 1976)

(19) Against the "Nizam Institute of Medical Sciences, Hyderabad, in column (2), after the entry "Doctor of Medicine (Hospital Admn.)" and the entry relating thereto in column (2), the following shall be inserted in namely :—

(2)	(3)
Doctor of Medicine (Cardiology)	D.M. (Cardiology) (This shall be a recognised medical qualification when granted on or after Feb., 1992)
Doctor of Medicine (Anaesthesiology)	M.D. (Anaesthesiology) (This shall be a recognised medical qualification when granted on or after Sept., 1993)
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognised medical qualification when granted on or after May 1994)

(20) Against the "Maharishi Dayanand University", in column (2) after the entry "Doctor of Medicine (Tuberculosis and Chest Diseases) and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
Doctor of Medicine (Radiotherapy)	M.D. (Radiotherapy) (This shall be a recognised medical qualification when granted on or after Nov., 1991)"

(21) Against "Sambalput University" on column (2), after the entry "Doctor of Medicine (Biochemistry)" and the entry relatiog thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
Doctor of Medicine (T. B. & Chest Diseases)	M.D. (T.B. & Chest Diseases) (This shall be a recognised medical qualification when granted on or after 1981)"

(22) Against the "Sanjay Gandhi Postgraduate Institute," Lucknow in column (2), after the entry "Magister Chirurgiae (Neuro-Surgery)" and the entry relating thereto in column (3), the following shall be inserted, namely :—

(2)	(3)
Doctor of Medicine (Neurology)	M.D. (Neurology) (This shall be a recognised medical qualification when granted on or after May, 1992)
Doctor of Medicine (Cardiology)	D.M. (Cardiology) (This shall be a recognised medical qualification when granted on or after 1992)

(23) Against the "Shivaji University" in column (2), after the entry "Doctor of Medicine (General Medicine) and the entry relating thereto in column (3), the following shall be inserted, namely :—

(3)	(2)
Doctor of Medicine (Pharmacology)	M.D. (Pharmacology) (This shall be a recognised medical qualification when granted on or after Jan., 1994),

(24) Against the "South Gujarat University", in column (2), after the entry "Diploma in Clinical (Pathology) and the entry relating thereto in column (3), the following shall be inserted, namely :—

Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognised medical qualification when granted on or after Feb., 1987).
Doctor of Medicine (Pharmacology)	D.M. (Pharmacology) (This shall be a recognise medical qualification when granted on or after June 1981)"

[No. V. 11015/1/96-ME(UG)]
S. K. MISHRA, Desk Officer

कृषि मंत्रालय

(कृषि अनुसंधान तथा शिक्षा विभाग)

नई दिल्ली, 20 जनवरी, 1998

का.आ. 285.—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान तथा शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10(4) के अनुसरण में , एतद्द्वारा परियोजना निदेशालय जैविक नियंत्रण (भा. कृ. अ. प.) हेब्बाल कृषि फार्म बंगलॉ जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करता है।

[संख्या 13 5-95 हिन्दी]

आर. पी. सरोज, अवर सचिव

MINISTRY OF AGRICULTURE

(Department of Agricultural Research and Education)

New Delhi, the 20th January, 1998

S.O. 285.—In pursuance of Rule 10(4) of the Official Language (Use of Official purpose of the Union) Rule, 1976, the Central Government, Ministry of Agriculture, Department of Agricural Research & Education hereby notifies the Project Directorate of Biological Control (ICAR) H.A. Farm, Bangalore, where more than 80 per cent of Staff have acquired the working knowledge of Hindi.

[No. 13-5/95-Hindi]

R. P. SAROJ, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 5 जनवरी, 1998

का.आ. 286.—चलचित्रिकी (प्रमाणन) नियम, 1983 के नियम 7 व 8 के साथ पठित चलचित्रिकी अधिनियम, 1952 की धारा 5 की उपधारा (i) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए तथा इस मंत्रालय की दिनांक 10-4-97 और 11-4-97 की समसंख्यक अधिसूचना के अनुक्रम में केन्द्र सरकार, श्रीश्री पेन्दुती पूर्णा चन्द्रा जोया नं. 16, बी. एन.

रोड, टी नगर, चेन्नई-600017 को केन्द्रीय फिल्म प्रमाणन बोर्ड के चेन्नई सलाहकार पैनल के सदस्य के रूप में दो वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, तत्काल प्रभाव से नियुक्त करती है ।

[फा. संख्या 809/3/96/एफ (सी) (भा.)]
वी. के. वालिया, डैस्क अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 5th January, 1998

S.O. 286.—In exercise of the powers conferred by sub-section (1) of section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 and in continuation of this Ministry's Notifications of even number dated 10th April, 1997 and 11th April, 1997 the Central Government is pleased to appoint Ms Pendurty Purna Chandra Zoya, No. 16, B.N. Road, T. Nagar, Chennai-600017 as a member of the Chennai advisory panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[File No. 809|3|96-F(C) (Pt.)]
V. K. WALIA, Desk Officer

इस्पात मंत्रालय

संशोधन

नई दिल्ली 16 जनवरी, 1998

का. आ. 287.—केन्द्रीय सरकार, पैट्रोलियम खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंण्ड (क) के अनुसरण में, भारत सरकार के इस्पात मंत्रालय की अधिसूचना का.आ. 3501 तारीख 17 दिसम्बर, 1994 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की अनुसूची के स्तम्भ—1 प्रविष्टि—
"उप डिप्टी कलक्टर (भूमि अर्जन)
एस्सार गुजरात लिमिटेड
विशाखापत्तनम"

के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात् :—
"विशेष डिप्टी कलक्टर,
(भूमि अर्जन),
एस्सार गुजरात लिमिटेड,
विशाखापत्तनम"

[सं. बी.एन.एम. 12/3/91-आई.डी.एस.]
एम. मनोहरन, संयुक्त सचिव

टिप्पण :—मूल अधिसूचना का.आ. सं. 3501 तारीख 17-12-94 की अधिसूचना द्वारा प्रकाशित की गई थी और बाद में का.आ. सं. 2121 तारीख 5-8-95 और का.आ. सं. 1795 तारीख 2-7-97 द्वारा संशोधित की गई थी।

MINISTRY OF STEEL

AMENDMENT

New Delhi, the 16th January, 1998

S.O. 287.—In pursuance of Section 17 of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Steel, S.O. No. 3501 dated the 17th December, 1994, namely.—

In the schedule to the said notification in column 1, for the entry,

"Sub-Deputy Collector,
(Land Acquisition) ESSAR Gujarat,
Limited, Visakhapatnam",

the following entry shall be substituted namely:—

"Special Deputy Collector,
(Land Acquisition),
ESSAR Gujarat Limited,
Visakhapatnam".

[No. VNS-12|3|91-IDS]
S. MANOHARAN, Jt. Secy.

Note : The Principal Notification was published vide Notification S.O. No. 3501 dated 17-1-1994 subsequently amended vide S. O. No. 2121, dated 5-8-95 and S.O. No. 1795 2-7-1997.

श्रम मंत्रालय

नई दिल्ली, 5 जनवरी, 1998

का. आ. 288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे जबलपुर (एम.पी.) के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कम-लेबर-कोर्ट जबलपुर (एम.पी.) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-98 को प्राप्त हुआ था।

[संख्या एल-41012/66/88-डी 2(बी)]
पी. जे. माईकल, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 5th January, 1998

S.O. 288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur (M.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Railway, Jabalpur (M.P.) and their workman, which was received by the Central Government on the 2-1-1998.

[No. L-41012/66/83-D-2(B)]
P. J. MICHAEL, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, जबलपुर (म.प्र.)

श्री. एन. दीक्षित

पीठासीन अधिकारी

प्र.कं. सीजीआई टी/एलसी/(आर)(125)/89

श्री नागराज,
आत्मज वीरास्वामी
क्वाटर नं. आरबी-1,
डिजल कालोनी, न्यू कटनी जंक्शन,
ब्लाक नं. 4918, कटनी
जिला जबलपुर (म.प्र.) ---प्रार्थी

विरुद्ध

मण्डल रेल प्रबन्धक,
मध्य रेलवे,
जबलपुर (म.प्र.) ---प्रतिप्रार्थी

अवार्ड

दिनांकित : 19-12-1997

1. भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने आदेश स. एल-41012/66/88-डी-2(बी) दिनांकित 1-6-89 के द्वारा निम्नलिखित विवाद निराकरणहेतु इस न्यायाधिकरण को भेजा है :—

अनुसूची

"Whether the action of Central Railway, Jabalpur (M.P.) in terminating the services of Shri Nagraj S/o Shri Veeraswamy, is justified? If not, what relief the workman is entitled to?"

2. दोनों पक्षों को स्वीकार है कि श्रमिक नागराज लोको फोरमैन, न्यू कटनी जंक्शन के अंतर्गत नैमित्तिक श्रमिक था। इसकी सेवाएं दिनांक 18-2-87 से समाप्त कर दी गई।

3. श्रमिक के अनुसार उसने नमित्तिक श्रमिक के रूप में कार्य वर्ष 80 से प्रारम्भ किया। छः महीने पूर होने के बाद उसे एम आर सी एल बना दिया गया और इस रूप में न्यू कटनी जंक्शन में उसने दिनांक 18-2-87 तक कार्य किया। इस दिनांक को उसकी सेवाएं समाप्त कर दी गई और यह कहा गया कि शासकीय अनुमति नहीं होने से उसे काम से हटाया जा रहा है। श्रमिक का यह कहना है कि उसने 7 वर्ष तक प्रतिप्रार्थी के यहां कार्य किया है और बिना किसी कारण उसे सेवा से प्रथक किया गया है। उसके विरुद्ध कोई विभागीय जांच या कोई आरोप-पत्र नहीं दिया गया। उसे सेवा से पृथक करने से पहले नोटिस या मुवाविजा भी नहीं दिया गया। ऐसी स्थिति में उसे सेवा से पृथक करने का आदेश अवैधानिक है तथा शून्य है। प्रतिप्रार्थी के पास अभी भी बहुत सी रिक्तियां है और इनमें किसी में भी श्रमिक को लिया जा सकता है। श्रमिक चाहता है कि उसे पुनः सेवा में लिया जाए।

4. प्रतिप्रार्थी अनुसार उनके पास छोटे कामों के लिए और अस्थाई कामों के लिए बहुत से रिक्त स्थान रहते हैं, इनमें लोकल मजदूर जो नैमित्तिक श्रमिक होते है, रख लिया जाता है और कार्य समाप्त होने के बाद इन्हें पृथक कर दिया जाता है। इनको कैजुअल लेबर सर्विस कार्ड दिया जाता है। वर्तमान श्रमिक ने 2/9/85 से 18/2/87 तक भिन्न-भिन्न जगहों पर अलग-अलग किस्म का काम कैजुअल लेबर के रूप में किया। दिनांक 18/2/87 को जब इसके लिए कोई काम नहीं बचा तो इन्हें सेवा से पृथक किया गया। श्रमिक ने डिप्टी सी एम ई, भोपाल के यहां भी कार्य किया और वहां यह मालूम पड़ा कि जो कार्य उसके पास था, वह नकली है। दिनांक 19/10/87 को श्रमिक को कार्य के लिए बुलाया गया, किन्तु वह स्वयं उपस्थित नहीं हुआ, क्योंकि वह भोपाल में कार्य कर रहा था। श्रमिक के विरुद्ध विभागीय जांच या आरोप पत्र देने की आवश्यकता नहीं थी, क्योंकि वह नियमित श्रमिक नहीं था। जब एकबार यह स्थापित हो गया कि उसके पास नकली सर्विस कार्ड है तो उसे पुनः सेवा में रखने का प्रश्न ही नहीं है। प्रतिप्रार्थी का यह निवेदन है कि श्रमिक की प्रार्थना निरस्त की जावे।

5. श्रमिक के अनुसार उसने वर्ष 80 से 18-2-87 तक न्यू कटनी जंक्शन में लोको फोरमैन की मातहती में काम किया। प्रतिप्रार्थी ने उसका डाक्टरी परीक्षण भी कराया और इसके बाद उसे नैमित्तिक श्रमिक रखा गया, परन्तु अकारण ही उसे सेवा से पृथक किया गया। समझौता अधिकारी के समक्ष असिस्टेंट इंजीनियर, कटनी ने यह लिखकर दिया कि श्रमिक को दिनांक 19-2-87 से इसलिए काम पर नहीं रखा गया, क्योंकि उसके लिए काम नहीं है। इस प्रकार श्रमिक को दि. 18-2-87 के पश्चात इसलिए सेवा से पृथक किया गया, क्योंकि कार्य समाप्त हो गया था।

6. उत्तरवाद में प्रतिप्रार्थी ने जो कारण बताया है वह यह है कि श्रमिक के पास नकली सर्विस कार्ड था, इस कारण उसे रेलवे में सर्विस की पात्रता नहीं है। इस नकली सर्विस कार्ड के संबंध में कोई आरोप-पत्र श्रमिक को नहीं दिया गया। इस संबंध में उस श्रमिक के विरुद्ध विभागीय जांच भी नहीं की गई। 18-2-87 का जो आदेश है, उसमें यह उल्लेख नहीं है कि श्रमिक को इसलिए कार्य से पृथक किया जाता है कि, क्योंकि इसके पास नकली सर्विस कार्ड है। यह प्रबन्धन को सिद्ध करना था कि श्रमिक नकली सर्विस कार्ड बनाकर रेलवे में कार्य किया। प्रबन्धन ने यह सिद्ध नहीं किया। इस परिस्थिति का लाभ श्रमिक को मिलेगा।

7. श्रमिक इस प्रकरण में प्रारंभ से ही यह कह रहा है कि उसने वर्ष 80 से 18-2-87 तक लोको शेड, न्यू कटनी-जंक्शन में कार्य किया है। प्रबन्धन के अनुसार श्रमिक ने दिनांक 2-9-85 से 18-2-87 तक कार्य किया है। प्रबन्धन के गवाह श्री जी. आर. मालवीया ने इस न्यायालय में यह कहा है कि "मैनेजमेंट ने कटनी के कार्य के बाबत कोई दस्तावेज पेश नहीं किये हैं" (ध्यान का पैरा-6) श्री मालवीया के कथन से यह सिद्ध नहीं होता कि जो सर्विस कार्ड न्यायालय में प्रस्तुत हुआ, वह नकली है।

8. सर्विस कार्ड प्रदर्श-डी-1 को देखने से यह पता लगता कि वर्ष 86 में श्रमिक ने 9-12-85 से 18-12-86, 20-3-86 से 18-8-86, 11-1-86 से 18-2-87 तक कार्य किए है। इस प्रकार वर्ष 86 में श्रमिक ने 262 दिन प्रतिप्रार्थी के मातहती में कार्य किया है।

9. श्रमिक को प्रतिप्रार्थी ने कोई आरोप-पत्र नहीं दिया तथा नोटिस भी नहीं दिया और सेवा से पृथक करने से पहले श्रमिक को मुआवजा भी नहीं दिया गया। इस प्रकार सेवा से पृथक करने का आदेश अवैधानिक है। आदेश अवैधानिक होने से श्रमिक की सेवा से पृथक करने का कार्य भी अवैधानिक है।

10. ऊपर लिखी विवेचना का निष्कर्ष यह है कि श्रमिक को प्रतिप्रार्थी सेवा से पृथक नहीं कर सकते। श्रमिक 19-2-87 से अभी तक सेवारत माना जायेगा। जिस अवधि में श्रमिक ने कार्य नहीं किया उस अवधि का वेतन श्रमिक पाने का अधिकारी नहीं रहेगा। अवार्ड प्रकाशित होने के तीन महीने के अंदर अगर श्रमिक को कार्य दिया जाता है तो प्रतिप्रार्थी को कोई वेतन नहीं देना होगा। अगर सेवा नहीं दी जाती है तो अवार्ड प्रकाशित होने के तीन महीने बाद से वास्तविक सेवा समाप्त होने तक श्रमिक को वेतन और भत्ते उस पद के देय होंगे। पेंशन के लिए श्रमिक को 19-12-87 से पात्रता होगी। इसी अनुसार अवार्ड पारित किया गया। दोनों पक्ष इस प्रकरण का अपना-अपना व्यय वहन करें।

11. अवार्ड की प्रतियां नियमानुसार भारत सरकार, श्रम मंत्रालय नई दिल्ली को प्रेषित की जाती है।

दिनांक 13-12-97

डी. एन. दीक्षित, पीठासीन अधिकारी

नई दिल्ली, 5 जनवरी, 1998

का.आ. 289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ ट्रावनकोर, कोचिन। के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अलापुजा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-1-98 को प्राप्त हुआ था।

[संख्या एल-12012/168/94-आई आर (बी-I)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 5th January, 1998

S.O. 289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Alappuzha, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Travancore Kochi, and their workman, which was received by the Central Government on the 2-1-1998.

[No. L-12012/168/94-IR(B.I.)]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, ALAPPUZHA

(Dated this the 1st day of December, 1997).

Present :

SHRI K. KANAKACHANDRAN

Industrial Tribunal.

I.D. No. : 26/95.

BETWEEN

The Assistant General Manager, State Bank of Travancore, Zonal Officer, Opp : Chacker Tower, Jews Street, Ernakulam, Kochi-682035)

AND

The Workman of the above concern A. Shamsuddin, Mappallil Padeeheethl, Thamallackal P.O. Alappuzha District.

Representations :—
Sri V.K. Ram Mohandas, Advocate, Alappuzha. — For Management.

M/s. H.B. Shenoy, Asok B. Shenoy & Mathews Emmanuel, Advocates, 'VATSAL'39/187, Krishnaswamy Road, Ernakulam Kochi—682 035. — For Workman.

AWARD

1. The Government of India by their Order No. L-12012/168/94-IR BI dated 9-11-1995 had referred the following issues for adjudication -

"Whether the action of the management of State Bank of Travancore in terminating the services of Sri Shamsudeen with effect from 14th June, 1993 is legal and justifiable? If not, what relief the workman is entitled?"

2. In the statement of claim filed by the workman it is stated that as an employee employed in the management Bank, he would come within the definition of workman as defined in the I.D. Act. As an employee, the conditions of his services were governed by All India Awards and bipartite settlements entered into from time to time concerning Banking Industry. He was initially engaged as a Peon in the Haripad Branch of the State Bank of Travancore in June 1980. He had worked in the nearby Danapady Branch also. At the time of his appointment he was not given any letter of appointment. He had been working all along in the vacancy of Peon. As a Peon, he was discharging all the duties and responsibilities as in the case of a permanent Peon. Although he worked in that manner, the privileges and benefits to which the regular Peons were enjoying were not extended to him. His engagement in that manner had continued fairly for a long time. Since he was being paid only daily wages, he made request for the regularisation in services. Instead of regularisation, his services were terminated with effect from 14-6-1993. That termination was without complying with the conditions stipulated in Sec. 25-F of the Industrial Disputes Act. Since he had to his credit about 13 years of continuous service. He is entitled for benefits contemplated in Sec. 25-F, 25-G and 25-H of the I.D. Act and also the protection envisaged in paras 522, 523 and 524 of the Sastri Award. While retrenching him, some other workman who were performing duties like him were retained in service despite the fact that they were juniors to him. As per the Government of India guidelines issued to all Nationalized Banks on 16-8-1990, it was mandatory to give regularisation to all temporary workmen who had rendered service for 240 days or more in a period of 12 consecutive months. Despite clear guidelines issued in that behalf, the management did not make any attempt to regularise him in service. Therefore the plea of the workman is for a declaration that the termination of his service with effect from 14-6-1993 is illegal, unjustifiable and ab initio void. Plea is also made for direction to the management to reinstate him in service with the benefit of full back wages and continuity of service.

3. The management in their written statement has disputed the contentions raised by the workman in his claim statement. According to them the workman had never been employed as a Peon in any of the branches under the management bank and in fact he was engaged only casually for the purpose or cleaning works and arranging of records. Whenever he was engaged he was paid daily wages and his engagement was never continuous. At no occasion he was employed as a Peon either in Haripad or Danapady branch. It is true he had been engaged on daily wages for some days in between the year 1986 and 1993. Since he had not done the work of a Peon at any time he is not entitled for any benefits other than daily wages for the days of work. Since he was engaged only on casual basis, that too intermittently, he is not entitled for any of the benefits such as notice pay, retrenchment compensation as contemplated in the I.D. Act. The contention that the management had violated the guidelines issued by the Government of India in the matter of regularisation of workmen who had rendered 240 days of service or more is denied. According to them only because he did not have requisite service he was not extended with the benefits as contemplated in the Government of India's circular.

4. To the counter the contentions of management, the workman had filed an elaborate reply statement. In that no additional grounds were urged but there is only an elaboration of what had been stated in the claim statement.

5. Before the starting of evidence, the union filed a petition for direction to the management to produce some of the documents in their custody. Those documents are registers of retrenched and temporary employees, the vouchers given by the workman during the period of his service, and the charges account register maintained by the Branches at Haripad and Danapady during the period from June 1980 to June 1993. As ordered by this Tribunal, the management had produced entire Charges Account Registers maintained in two branches during the period from June 1980 to June 1993. But only few vouchers debit slips were produced by the management. After the production of the above document both sides adduced evidence.

6. The workman while tendering evidence had deposed that during the period from 1980 to 1989, he had been under employment occasionally and that too three or four days during a fortnight. But from 1989 onwards and till his termination, he was employed in either of the branches almost every day except Sundays and holidays. He had also deposed that only when he made request for regularisation in service, the management terminated his service. In the course of evidence, he has stated that in the Haripad Branch there were four permanent Peons and he was engaged continously when two of them left one after another after getting promotion. After sometime, two peons were retired from service also. Because of such incidents of promotion and retirement, he had opportunity to work continuously almost all days from 1989 to 1993. This part of the evidence is not countered by the management while adducing evidence. They could have very well established the real state of affairs by producing documentary evidence to show there was no promotion or retirement. MW1 is the Manager of the Mavelikara Branch during the period 1987-89. According to him the workman was engaged in the Bank only when there was the requirement of a sub-staff i.e. Peon. To a specific question whether the workman was engaged only when service of a sub-staff was in needs, the witness answered in the affirmative. But he hastened to add that such appointment was not as a Peon. That does show that all along he was engaged to do the work of a Peon. If that fact is taken into account, the management ought to have proved how many days the workman had to work on account of promotion of two peons and subsequently on account of retirement of 2 other peons. In view of these, there was every likelihood of continuous employment to the workman to do the work of Peon either on account of promotion or retirement of regular incumbent.

7. MW2 is the present Manager of Danapady Branch. Through him Charges Account Register for the year 1993 was marked. In that particular year, according to MW2, the workman had worked only 8 days. Such assertion is on the basis of Ext. M1 series vouchers. However he admitted that there are entries in Ext. M2 Charge Account Register which do not show the name of the person who received actually the daily wages. He has admitted that the branch had received Ext. W1 and W2 circulars from the Head Office. But he is not sure whether such circulars or letters were responded by the concerned branch at the relevant time or later.

8. Though the management had produced voluminous documents showing the details of daily wages paid to various persons, in the absence of names in all such vouchers the identification of actual recipients is quite impossible and therefore it is quite unsafe to reply on the entries in those charges Account Registers. Therefore the contention of the management that only for few days the workman had been employed cannot be accepted on the face value in this connection it is relevant to note the content of Ext. W1 Circular issued from the Head Office of the management bank Circular No. 75|90 dated 10th October 1990. In that circular all the branches under the management Bank were asked to furnish details regarding the engagement of casual labourers who are performing the duties of permanent employees. MW2 is not specific about whether any reply had been sent in response to Ext. W1 circular. Through Ext. W2 letter dated 13-3-1991 the branches were further asked to send the report as contemplated in Ext. W1 and if there was nothing to be sent, the branches were asked to send nil statement also. It is further reminded therein that the temporary service rendered

by temporary employees have to be taken note of while making the selection of permanent employee. The assertion made by the workman while tendering evidence is that a statement including his name was sent from the union at that time, but the management failed to act on it while making permanent appointments. That is his main grievance also. In the absence of any evidence to show that even a nil statement was sent by the concerned branch in response to Ext. W1 letter, the contention raised by the workman is to be given more weight. In view of this it can only be concluded that at least from 1989 to 1993 the workman was practically under continuous employment except on Sundays and holidays. For reaching a conclusion like that not only the management's failure to produce any evidence of sending the nil statement in response to Ext. W2, but also their failure to adduce evidence on the alleged long absence of two Peons either on account of promotion or on account of retirement, were taken note of. In addition to this, lack of particulars in the charges Account Register showing the names of actual recipients of daily wages in most of the entries cannot be ignored. Therefore, according to me, the workman's contention that he had rendered 240 days of service every year during the period from 1989 to 1993 is only to be accepted. In that case, as a workman coming under the I.D. Act, he is entitled for the protection as envisaged in Sec. 25-F of the I.D. Act. It is an admitted case of the management that while dispensing with his service the workman was not given either notice pay or compensation in terms of Sec. 25-F of the I.D. Act. Therefore an award is passed holding that the termination of the service in the case of workman is illegal and he is entitled to continue in service till his services are validly terminated. As a consequence, he is entitled for backwages also.

(Dated this the 1st day of December, 1997.)

K. KANAKACHANDRAN, Industrial Tribunal.

APPENDIX

[I. D. 26/95(C)]

Witnesses examined on the side of the Management :—

MW1 : Pandirimath.

MW2 : Mohanakrishnan.

Witness examined on the side of the Workman :—

WW1 : Shamsuddin.

Exhibits marked on the side of the Management :—

M1 (series) Receipt & vouchers for the period from 1980 to 1993 in respect of the workman.

M2 : Photocopy of the charges Account Register of State Bank of Travancore, Danapady branch for the year 1993.

M3 (series) Vouchers regarding payment to the workman for the period from 1990 to 1992.

Exhibits marked on the side of the Workman :—

W : Staff Circular No. 75/90 dated 10-10-1990 of SBT, Head Office Tvm.

W2 : Circular letter No. 111K/11b/40 dated 13-3-1991 of SBT Zonal Office, Kottayam.

नई दिल्ली, 5 जनवरी, 1998

का. आ. 290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ बीकानेर एंड जयपुर, जयपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-1-98 को प्राप्त हुआ था।

[संख्या एल-12011/49/95-आई आर (बी I)]

पी. जे. माइकल, डैस्क अधिकारी

New Delhi, the 5th January, 1998

S.O. 290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jodhpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur, Jaipur and their workman, which was received by the Central Government on 5-1-98.

[No. L-12011/49/95-IR(B-I)]

P. J. MICHAEL, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी—श्री चांदमल तोतला आर.एच.जे.एस.
औ. विवाद (केन्द्रीय) सं. : 5/1997
दी जोनल सैक्रेटरी, अखिल भारतीय कर्मचारी संघ जोनल
यूनिट मार्फत एस.बी.बी.जे. सुराणा मार्केट
ब्रांच पाली, मारवाड़ —प्रार्थी पक्ष

बनाम

दी रिजनल मैनेजर, स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर
हैड आफिस तिलक मार्ग, जयपुर —अप्रार्थी-पक्ष

उपस्थिति :

(1) प्रार्थी-पक्ष की तरफ से कोई उपस्थित नहीं।

(2) अप्रार्थी की तरफ से श्री वासुदेव व्यास अधिवक्ता उप०

अधिनिर्णय

दिनांक 16-10-1997

श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक 12011/49/93 दिनांक 3-3-97 के जरिए निम्नांकित विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है :—

"Whether the action of the management of State Bank of Bikaner and Jaipur, Head Office, Jaipur through General Manager, (P&A) in stopping the allowance of Asstt. Head Cashier w.e.f. 3-5-94 is legal and justified? If not, what relief concerned workmen entitled to?"

2. उक्त रेफरैन्स इस न्यायालय में प्राप्त होने पर पक्षकारों को जरिए नोटिस आहूत किया गया। प्रार्थी-पक्ष पर नोटिस की तामील दिनांक 13-6-97 की पेशी व 11-8-1997 की पेशी को होने के बावजूद उसकी तरफ से कोई प्रतिनिधि उपस्थित नहीं हुआ तथा न ही कोई मांग-पत्र प्रस्तुत किया। अप्रार्थी की तरफ से श्री वासुदेव व्यास ने अपना अधिकार-पत्र प्रस्तुत किया। प्रार्थी-पक्ष की तरफ से बावजूद तामील नोटिस किसी के उपस्थित नहीं होने व मांग पत्र पेश नहीं करने से यही प्रतीत होता है कि प्रार्थी-पक्ष इस मुकदमे को आगे चलाने का इच्छुक नहीं है तथा प्रार्थी व अप्रार्थी के मध्य अब कोई विवाद शेष नहीं रहा है। अतः इस प्रकरण में कोई विवाद नहीं रहने का अधिनिर्णय (नो डिस्प्यूट एवार्ड) पारित किया जाना चाहिए।

अधिनिर्णय

3. प्रार्थी-पक्ष की तरफ से नोटिस तामील के बावजूद किसी के उपस्थित नहीं होने व मांग-पत्र प्रस्तुत नहीं करने से यही प्रकट होता है कि प्रार्थी पक्ष इस प्रकरण को आगे चलाने में रुचि नहीं रखता है तथा प्रार्थी-पक्ष व अप्रार्थी के मध्य अब कोई विवाद शेष नहीं रहा है। अतः श्रम मंत्रालय भारत सरकार द्वारा प्रेषित की गई अधिसूचना सं. 12011/49/95 दिनांक 3-3-97 में कोई विवाद नहीं रहने का अधिनिर्णय (नो डिस्प्यूट एवार्ड) पारित किया जाता है। इस अधिनिर्णय को वास्ते प्रकाशनार्थ श्रम मंत्रालय भारत सरकार को प्रेषित किया जाये।

4. यह अधिनिर्णय आज दिनांक 16-10-1997 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

चांदमल तोतला, न्यायाधीश

नई दिल्ली, 5 जनवरी, 1998

का.आ. 291 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया बंगलौर, के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कम लेबर कोर्ट, बंगलौर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-97 को प्राप्त हुआ था।

[संख्या एल-12012/300/91-आई आर बी III,
संख्या एल-12012/301/91-आई आर बी-III,
संख्या एल-12012/302/91-आई आर बी-III,
संख्या एल-12012/303/91-आई आर बी-III,
संख्या एल-12012/304/91-आई आर बी-III,
संख्या एल-12012/305/91—आई आर बी-III,
संख्या एल-12012/306/91-आई आर बी-III,
संख्या एल-12012/307/91-आई आर बी-III
संख्या एल-12012/308/91-आई आर बी-III,
संख्या एल-12012/309/91-आई आर बी-III,
संख्या एल-12012/310/91-आई आर बी-III]

पी.जे. माईकल, डैस्क अधिकारी

New Delhi, the 5th January, 1998

S.O. 291.—In pursuance of Seciton 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Reserve Bank of India, Bangalore and their workman, which was received by the Central Government on 30-12-97.

[No. L-12012/300/91-IR B.III,
L-12012/301/91-IR B.III,
L-12012/302/91-IR B.III,
L-12012/303/91-IR B.III,
L-12012/304/91-IR B.III,
L-12012/305/91-IR B.III,
L-12012/306/91-IR B.III,
L-12012/307/91-IR B.III,
L-12012/308/91-IR B.III,
L-12012/309/91-IR B.III,
L-12012/310/91-IR B.III]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Bangalore, the 18th December, 1997

PRESENT :

Sri K. Mohanachandran, B.Sc., B.L., D.L., A.L., Presiding Officer.

Central Reference Nos. 1/92 to 11/92

The General Secretary,
Reserve Bank Workers
Organisation,
Anuradha Building,
Ananda Rao Circle,
SC. Road, Bangalore-
560009.

The Same and common
1st party in all the
C.R. Nos. 1/92 to 11/92.

Vs.

The Manager,
Reserve Bank of India,
Nrupathunga Road,
Bangalore-560002.

The same and common
2nd party in all the
C.R. Nos. 1/92 to 11/92.

COMMON AWARD

In this reference made by Hon'ble Central Government in its Order No. L-12012/300/91-IR.B.III dated 8-1-92/ (registered as C.R. No. 1/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating the services of Sri S. Mani, Ex-Ticca Mazdoor is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its Order No. L-12012/301/91-IR.B.III dated 8-1-92 (registered as C.R. No. 2/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore, in terminating Sri R. Krishnappa, Ex. Ticca Mazdoor is justified If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its Order No. L-12012/302/91-IR.B.III dated 8-1-92 (registered as C.R. No. 3/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating the services of Sri M. Rajendran, Ex-ticca Mazdoor, is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/303/91-IR.B.III dated 8-1-92 (registered as C. R. No. 4/92) the point for adjudiction is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating Sri R. Chandrasekhar, Ex-Ticca Mazdoor is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/304/91-IR.B.III dated 8-1-92 (registered as C. R. No. 5/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating the services of Sri M. V. Nagaraj, Ex-Ticca Mazdoor is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/305/91-IR.B.III dated 8-1-92 (registered as C.R. No. 6/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating the services of Sri A. Alexander, Ex-Ticca Mazdoor, is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/306/91-IR.B.III dated 8-1-92 (registered as C. R. No. 7/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating Sri R. Sethu, Ex-Ticca Mazdoor, is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/307/91-IR.B.III dated 8-1-92 (registered as C. R. No. 8/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating Sri R. Radhakrishnan, Ex-Ticca Mazdoor, is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/308/91-IR.B.III dated 8-1-92 (registered as C. R. No. 9/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating the services of Sri G. Selvaraj, Ex-Ticca Mazdoor is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/309/91-IR.B.III dated 8-1-92 (registered as C.R. No. 10/92) the point for adjudicaiton is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating Sri N. Bhushanam, Ex-Ticca Mazdoor is justified ? If not, to what relief he is entitled to ?"

In this reference made by Hon'ble Central Government in its order No. L-12012/310/91-IR.B.III dated 8-1-92 (registered as C. R. No. 11/92) the point for adjudication is as follows :

"Whether the action of the management of Reserve Bank of India, Bangalore in terminating Sri S. Subbaramu, Ex-Ticca Mazdoor, is justified ? If not, to what relief he is entitled to ?"

(2) Though there are 11 affected parties in the above cited Central Reference Nos. 1/92 to 11/92 respectively all the above said affected parties have raised Central dispute through the General Secretary, Reserve Bank Workers Organisation who have been referred as 1st party in all the above cited references made by the Central Government. Accordingly Court notices were sent in the said each and every cases to both the parties as usual. In the above said 11 references Sri N. G. Phadke, Advocate, Bangalore had entered appearance for 1st party and Sri K. D. Zacharias, Dy. Legal Adviser of 2nd party had entered appearance for the 2nd party. Though both the parties have filed separate claim statement, written statement and reply statements in each case respectively, all those claim statement, written statement and reply statement contain common averments. Further, in the above said circumstances, both the counsel filed joint memo stating that all the above said 11 cases could be tried together, evidences recorded in C. R. No. 1/92 could be treated as evidence for all the other cases, common arguments could be heard and common award could be passed. Therefore, the following common award is passed.

(3) The brief common averments stated in all the 1st parties in their claim statements in C. R. Nos. 1/92 to 11/92 are as follows :

All the 1st parties joined the services of 2nd party as Ticca Mazdoors and worked continuously from April, 1980 to December, 1982. The 2nd party had terminated the services of 1st parties w.e.f. 1-1-1983 without holding any enquiry or assigning reasons and also not compiled the mandatory provisions of law pertaining to retrenchment. When the 1st parties had demanded for explanation for termination the 2nd party had informed that they have doubts with regard to their educaional qualification and school leaving certificates. Further the 2nd party stated that complaints were lodged in police against the 1st parties and after investigation if the court clears the case, the 1st parties would be reinstated with all consequential benefits. The 1st parties had submitted correct and genuine informations to the 2nd party, but they were not given good result.

(4) The Chief Metropolitan Magistrate, Bangalore in C.C. No. 5517/1984 and C.C. No. 9771/1984 and the I Additional Chief Metropolitan Magistrate in C.C. No. 5518/1984 were pleased to acquit the 1st parties from all the charges on 24-9-87, 5-8-87 and 20-4-87 respectively and accordingly the 1st parties requested the 2nd party to reinstate them with all other consequential benefits. But the 2nd party neither considered their request nor bothered to reply them. The Union of the 1st parties also represented as per letter dated 11-4-90 to 2nd party to consider the cases of 1st parties and again the 2nd party not replied for the same.

(5) The 2nd party had not complied with mandatory provisions of law pertaining to retrenchment and Section 25-F of the I.D. Act. The 2nd party committed unfair labour practice as defined under Section 2(ra) read with Ss. 25-T and U of the I.D. Act. Hence, the action of the 2nd party is not sustainable in law. Further the action of the 2nd party is bad in view of the law laid down by Hon'ble Supreme Court of India in H. D. Singh v. R. B. I. and others reported in 1985 SCC (L&S) 975. The 1st parties are not gainfully employed because they are over aged to join any fresh employment. Therefore, the 1st parties pray that the 2nd party has to reinstate them with continuity of service, full back wages and all other consequential benefits together with costs of these proceedings.

(6) The concised common avermets stated in the written statement in C. R. Nos. 1/92 to 11/92, are as follows :

The 2nd party had not terminated the services of all the 1st parties. The 1st parties who were engaged as Ticca Mazdoor (casual labourer) stopped presenting themselves in the office from 30-9-82 to 2-3-1987 due to their arrest by police and accordingly they never turned up for work till 3-3-87 which clearly show that they have no intention to work and have left voluntarily. Therefore, the claims of the 1st parties are not maintainable and have to be dismissed.

(7) The 1st parties were engaged on from August, 1980 to December, 1982 depending upon the availability of casual vacancies on various dates and the need for engaging ticcas. The 1st parties were interviewed among other ticca mazdoors. During the interview, answers given by some candidates (most of them working as ticca mazdoors) led to suspect their educational qualifications, age and other testimonials furnished by them. Hence it was decided to verify the above said certificates at the time of initial selection as ticca mazdoors and subsequently before considering them for appointment as regular mazdoors.

(8) The 2nd party had empanelled the 1st parties and they have to be present at Bank's office every day so that they may be engaged if there is work. The engagement of 1st parties on daily wage basis for each day is done in accordance with the panel. Hence, the 1st parties, on their turn for engagement, is absent, the next person in the panel will be engaged. Therefore, the 1st parties are not employees of the bank and accordingly they have no right to any post in the 2nd party bank hence the question of holding enquiry or giving reasons when they themselves stopped presenting themselves for allotment of work in the 2nd party and if the genuineness of the certificate produced by them are not considered would not arise.

(9) Further on verification of the transfer certificates furnished by the 1st parties it had been proved that they have submitted a bogus transfer certificate which were issued by the school wherein the 1st parties had not studied and the particulars regarding date of birth, caste etc. of the 1st parties was against the real facts. The 2nd party after knowing the facts (i.e.) misrepresentations of the 1st parties, had referred the matter to Ulsoor Gate Police Station for further investigation and necessary action. The 1st parties were not given any type of assurance for reinstatement if the matters were settled by the court. The court also not acquitted the 1st party and had merely given the benefit of doubt holding that the prosecution has failed to prove its case against the 1st parties beyond reasonable doubt.

(10) Again the cases of regular employee cannot be equatted with 1st parties who were ticca mazdoors. The 2nd party had not committed any unfair labour practice as defined in Section 2(ra) read with Sections 25-E and 25-U of the I.D. Act. Further the 2nd party had not violated the principles of natural justice by not holding any domestic enquiry because the 1st party were empanelled as ticca mazdoor who have no right to any post in the 2nd party bank and it was not necessary for the 2nd party to hold a domestic enquiry. The decision of the Hon'ble Supreme Court in H. D. Singh's case as stated by the 1st parties is not applicable to the facts and circumstances of the present case. The 2nd party had not illegally rejected the requests of the 1st party for reinstatement. Hence, the claim of the 1st party were without any merit and their claims have to be dismissed.

(11) The common brief averments of the 1st parties in their rejoinder in C. R. Nos. 1/92 to 11/92 are as follows ;

The 1st parties had not served as casual labourers and the 1st parties were continuously discharging the duty of permanent in nature till their services were dispensed with by the 2nd party. The 2nd party extracted the work from 1st party regularly and continuously. The 1st party never abandoned their services voluntarily or unvoluntarily. The 1st party were called ticca mazdoor just for the purpose of depriving them of the benefits of service as has been available to the regular employees, though the 1st parties were continuously performing the job identical and similar to that of regular employee. Hence, the 1st parties since having worked continuously the permanent nature of job, they are entitled to be hold and enquired with, before terminating from service.

(12) The 1st parties were prevented from performing duties by the 2nd party, and then the 2nd party had terminated the services of 1st party. But the 1st party never abandoned doing work till 3-3-1987 on their own. The grounds urged in the claim statements of 1st party are correct and the 2nd party denial should not be taken for consideration. Therefore the 1st parties prays to grant relief claimed by them in their claim statements by rejecting the contentions made by the 2nd party in their written statements.

(13) After considering the above said pleadings of both the parties, my predecessor on 15-7-92, as we could see the notes order, passed an order to that effect that the point for adjudication would cover the schedule to the reference and no separate issue were required. He had also stated in the said order that all subsequent points like jurisdictions etc., would be considered at the time of final arguments.

(14) So long as the question of jurisdiction is concerned, it is clear from the evidence placed by both the parties that the status of the 1st parties had been admitted by the 2nd party as workmen. The material placed before this Tribunal would further show that the 1st parties had worked in the 2nd party Bank from April 1980 to December 1982 and they had been paid wages for the same. Further the evidence of MW3 at para 5 in cross-examination would show as follows :

"The workmen have given a number of representation to the management praying for reinstatement. I verified the subsequent transfer certificates at the instance of the management, the office has written a letter to the Central Office recommending that these workmen may be reinstated."

But unfortunately the 2nd party had not filed any document to show that what type of recommendations had been made for the reinstatement of the 1st parties. In such circumstances, I am of the opinion that the definition of workmen under sections 2(S) or 2(A) of the Industrial Dispute Act would, in all aspects, apply to all the workmen before us. Further it had been admitted by both the parties that all the workmen had not worked after December 1982 and based on such facts and circumstances the workmen had raised the present dispute. Therefore I hold that this tribunal has got ample jurisdiction to try all the 11 cases.

(15) It is admitted case of the parties that all the 1st parties under the references CR No. 1/92 to 11/92 have been appointed by the 2nd party as ticca mazdoors. As per the 1st parties, they had worked continuously from April 1980 to December 1982. But the 2nd party had denied the above said claim of continuous service of the 1st parties on the ground that the 1st parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessary arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the 1st party, since the 2nd party had denied the above said claim of continuous period of service, it is for the 2nd party to prove through the records available with them as the relevant records could be available only with the 2nd party.

(16) If that be the case, the 2nd party i.e., Reserve Bank of India, being the controlling authority of all the Banks in the country could act as an example and maintain some relevant records and in particular, relevant attendance registers to show the actual periods during which the above said eleven 1st parties worked between April 1980 and December '1982. It could have helped them to discharge their burden under law. But in spite of the request made by the 1st parties and order passed by this Tribunal in IA1, dated 12-5-1993, the 2nd party had not filed any of those relevant documents.

(17) As relied on by the learned counsel for the 1st parties, in 1987 (55) FIR page 689 (Between Gaurishankar Vishwakarma and Eagle Spring Industrial Private Ltd., and another) it is held by the Honourable High Court of Bombay, at para 3 that,

> "It is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service."

Therefore, from the above cited judgement, it is clear that when an employer, in an industrial dispute, wish to say that the workmen had abandoned their service, he has to give notice to workmen to resume their duties and before termination, there should be enquiry and these processes must be proved by the employer. But, unfortunately, at present the employer herein had not discharged his burden to take shelter of "abandonment".

(18) Further the learned counsel for the 1st parties also relied on AIR 1964 Supreme Court page 1272 (1950-82) SCLJ (Vol. I) page 1 (Buckingham and Carnatic Company Limited versus Venkatalah) wherein it is observed at the end of page 5 and beginning of page 6 as follows :

> "It is true that under common law an interference that an employee has abandoned on relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified standing orders, the doctrines of common law or considerations of equity would not be relevant. It is when a matter of constructing the relevant term itself. Therefore, the first party of standing order 8(il) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment."

(19) Therefore, from the above cited decisions, it is clear that the 2nd party who have pleaded the abandonment must prove the abandonment subject to any exemptions stated in the standing orders. But unfortunately so long as the above said 11 cases are concerned, neither the 2nd party nor any of the MWs were able to place any material to discharge the said burden of the 2nd party nor they relied on any standing orders either to shift the burden on the 1st parties or to draw any presumption. It is surprising to note that inspite of the notice given by the 1st parties to produce relevant attendance register pertaining to the concerned 1st parties and a specific order in I.A.1 dated 12-3-1993, 2nd party neither attempted to file relevant attendance registers nor tried to give any satisfactory explanation for their failure. Of course it is true that the 2nd party had given an explanation namely those attendance registers are very old and hence could not be produced. But this explanation cannot be acceptable, because as I pointed out earlier, apart from the attendance registers, there may be other relevant records to show that the 1st parties either worked continuously as alleged by the 1st parties or only during the leave vacancy with break of service. As relied on by the learned counsel for the 1st parties, in AIR 1968 Supreme Court page 1413 (Gopalkrishnaji Ketkar v. Mohamed Haji Latif and another) our Hon'ble Apex Court had established the principles of law (viz.) an adverse inference can be drawn against the parties who failed to produce the important and relevant records within their custody. I wish to quote the wordings of Their Lordship at pages 1416 at para 5 in the above said decisions as follows :

> "Even if the burden of proof does not lie on a party, Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof".

Therefore, the materials placed before this Tribunal lead to the only conclusion that the 2nd party is not in a position to prove their case namely the concerned 1st parties to 11 had abondoned themselves without any proper reasons.

(20) That apart, the circumstantial evidence also would show that the plea of the abandonment had been taken by the 2nd party only for the sake of defence in this case and it is not real one. In order to explain the same when we perused the admitted documents Exs. M1 to M7 together with the admitted evidence of MW3 at para 5 of his deposition, we would see that from 3-3-87 till 11-4-90 either all most all the 1st parties before this Tribunal had continuously requested the management for their reinstatement alleging that they served in the 2nd party Bank continuously from April '80 to December '82. They also pleaded the same in their respective claim petitions before us. But the management as per Exs. M8 dated 8-5-91 had not denied the alleged claim of continuous service of the 1st parties at their earliest opportunity. But on the other hand, Ex. M8 would show that for absorption of the 1st parties the 2nd party had put some other conditions and demanded the 1st parties workmen for their signature, if they agreed for those conditions. If that be the case, it could be seen that, at the earliest point of time, the 2nd party Bank had not denied the said claim of continuous service made by 1st parties. Hence, the documents Exs. M1 to M8 would also disqualify the 2nd party from claiming said plea namely since because the 1st parties had worked temporarily that too only on leave vacancy they are not entitled for any benefits under provisions of the I.D. Act.

(21) Again it was argued by the learned counsel for the 1st parties that as admitted by MW3, at para 1 of his deposition, even though the 1st parties had worked as ticca mazdoors (i.e.) temporary worker but since they worked more than 240 days (i.e.) continuously worked from April '80 to December '82 they were entitled to get all the benefits under section 25-F of the I.D. Act. To seek support of the above said argument, the learned counsel for the 1st parties placed reliance on the following three cases:

(1) 1989-II LLJ-page 294 (State Bank of India v. Union of India and others)

(2) 1981-II LLJ—page 382 (Tapankumar Jana v. Calcutta Telephones & others)

(3) 1985 SSC (L&S)—page 975 (H. D. Singh v. Reserve Bank of India and others) (also relied on by the 2nd party).

(22) In the above cited 1st case of the (Head note) Hon'ble High Court of Patna it is noted as follows :

"The Bank at no stage claimed to have dismissed or discharged the workman. There was no written order of discharge, dismissal or termination. In the absence an order of dismissal, discharge or termination, the management cannot lead evidence before the Tribunal."

(23) In the 2nd case, the Hon'ble High Court of Calcutta at para 15 had observed that:

"The definition has not provided for the exclusion of a casual labourer from the category of workman, nor has it laid down that only the permanent employees of an industry will be workmen. Certain employees have been excluded from the operation of the definition of "workman", but such exceptions also do not include a casual labourer. The primary condition that has to be fulfilled by an employee to bring him within the definition of "workman" is that he must be employed in an industry for hire or reward. The concept of permanent employment is not the only criterian of the definition of the term "workman". Any employee who satisfied the primary condition as stated above and who does not come within the exception contained in the definition will be a workman. If a casual labourer is employed in an industry for hire or reward, he will be a "workman" within the meaning of S. 2(s). There is nothing in the definition of terms ("workman") which excludes a casual labourer On the contrary S. 25C of the Act gives a sufficient indication that a badli-workman or a casual workman is a workman when it excludes them from the right to compensation for layof. In Digwadih Colliery v. Their workman, (1965-II LLJ 118), the Supreme Court upheld the award of the Central Government Industrial Tribunal, Dhanbad, holding that the termination of the service of a badli workman amounted to retrenchment within the meaning of S. 2(oo) of the Act. In other words, it was impliedly ruled by the Supreme Court that a badli-workman was a "workman" within the meaning of the definition of the term "workman". In Pilot Pen Company (India) Limited v. The Presiding Officer, Additional Labour Court, Madras. (1971-I LLJ 241), it was held by the Madras High Court that there was no room for the contention that S. 2(s) incorporated into it the idea that only a permanent employee can be construed to be a workman. In P Joseph v. Management of Gonal Textiles Mills, (1975-I LLJ 136), it has been observed that the definition of "workman" does not exclude (even the casual employee or a substitute like "badli". The learned Judge has relied on the above two decisions and has come to the conclusion that the appellant who is a casual labourer is a "workman" within the meaning of S 2(s) of the Act In our view, the learned Judge is perfectly justified in holding that the appellant is a workman."

(24) The third decision is of our Hon'ble Supreme Court. In a case of Reserve Bank of India the Hon'ble Supreme Court had held at para 9 that:

"The appellant was not told that he would be struck off the rolls if he passed the matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The case of the bank is that he was orally informed that his name has been struck off. Striking off the name of a workman from the rolls by the employer amounts to "termination of service" and such termination is retrenchment within the meaning of Section 2(oo) of the Act if effected in violation of the mandatory provision contained in Section 25-F, and is invalid."

and in para 13 that;

"The confidential circular directing the officers that workmen like the appellant should not be engaged continuously but should as far as possible, be offered worked on rotation basis and the case that the appellant is a badli worker, have to be characterised as unfair labour practice. The Fifth Schedule to the Industrial Disputes Act contains a list of unfair labour practices, as defined in Section 2(ra). Item 10 reads as follows:

To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privillages of permanent workman.

We have no option but to observe that the bank, in this case, has indulged in methods amounting to unfair, labour practice. The plea that the appellant was a badli worker also has to fail."

Again at para 15 it is found that :

"We set aside the order of the Industrial Tribunal and hold that the striking off the name of the appellant from List II amounted to retrenchment under Section 2(oo) of the Act and was in violation of Section 25-F. We direct the first respondent bank to enlist the appellant as a regular employee, as Tikka Mazdoor, to reinstate him and pay him his back wages upto-date."

(25) But on the other hand it was argued on behalf of the 2nd party, justfiying their act of refusal to give work to the 1st parties, that since the 1st parties had worked in the 2nd party only as a temporary worker in the name of the Ticca mazdoors. and they have not put continuous service but abstained from their duties for a continuous period, they were not entitled for any benefit under Section 25-F and that mere completion of more than 240 days of service could not be sufficient ground to claim regularisation.

(26) They rely on AIR 1994 Supreme Court Page 1040 wherein the Hon'ble Supreme Court at para 8 had observed that:

"Hence, the reliance placed on the two letters for contending that the seasonal employees who had put in 240 days of service were to be made permanent or that the appellant Federation had accepted them as perennial permanent employees is not well merited.

The reliance placed by the respondent Union, therefore, on the fact that the seasonal employees belonging to the Phaltan zone were made permanent although they were junior to the other seasonal employees to contend that all the seasonal employees who had put in 240 days of service should be made permanent is misconceived. The case of the said employees having been decided on incorrect facts will have, therefore, to be treated as isolated instances and cannot be made the basis of the contention that the seasonal employees who have put in 240 days work should be made permanent perennial employees."

But as I pointed out earlier it is clear from the material evidence, that the 1st parties had worked continuously from April '80 to December '82 and only when they have been refused work orally by the Bank they were unable to attend thework. I also discussed the plea of abondanment taken by the 2nd party in supra. It is the admitted case of the 2nd party that all the 1st parties have been appointed as ticca mazdoors and they worked during the period from April '80 to December '82. Therefore, it is needless to say that as per above quoted well decided principle of law based on Section 2(A) of I.D. Act, any temporary worker who have put service for a continuous period of 240 days will be entitled for the benefit under Section 25-F of I.D. Act. Therefore, with respect I find that the 2nd party cannot seek any support from the decision reported in 1985 SCC (L&S) Page 975, 1985 L&B I.C. 1733.

(27) Further it is clear from the facts of the case that all of a sudden the 1st parties were informed not to come to the work since their names had been struck off from the list II on the alleged ground of their production of fake certificates to prove educational qualification, age etc. But as strongly argued by the learned counsel for the 1st parties the management neither filed any specified conditions for appointment of ticca mazdoor nor filed any document to show that the conditions or rules followed the mode of selection from the list II to place the temporary workers in the list I as deposed by MW2. It seems from the contention of the 2nd party that on the criminal case filed by the management against the 1st parties workman regarding their production of certificate/transfer certificate, the workmen themselves had abandoned the work. But the said contention also cannot be accepted because thtre is no iota of evidence to substantiate the said contentions.

(28) But on the other hand if we peruse the entire file Ex. M12 it would show that some other ticca mazdoor namely one Sri V. Mani, Sweeper who faced the same type charge (i.e.) production of false certificate was admonished and taken back into the 2nd party Bank. In the present case as admitted by MW2 Exs. W1 to W11 are the copies of ctrtificates filed by the 1st parties (as detailed below) to prove their qualification, etc.

(1) Sri S. Mani (CR. No. 1/92)	— Exs. M13
(2) Sri R. Krishnappa (CR. No. 2/92)	— Exs. M14
(3) Sri M. Rajendran (CR .No. 3/92)	— Ex. M15
(4) Sri MV. Nagaraj (CR. No. 5/92)	— Ex. M16
(5) Sri A. Alexander (CR No. 6/92)	— Ex. M17
(6) Sri G. Selvaraj (CR. No. 9/92)	— Ex. M18

It is also admitted by MW2 that subsequently, the workmen filed the genuine certificates (i.e) Exs. M19 to M29) Exs. M19 to M29 contain some other documents also but the documents pertaining to this case are detailed below :

(1) Sri M. Rajendra (CR No. 4/92)	Exs. M21
(2) Sri R. Chandrasekhar (CR. No. 4/92)	— Ex. M22
(3) Sri MV. Nagaraj (CR. No. 5/92)	— Ex. M23
(4) Sri A. Alexander (CR. No. 6/92)	— Ex. M24
(5) Sri R. Sethu (CR. No. 7/92)	— Ex. M25
(6) Sri R. Rādhakrishnan (CR No. 8/92)	— Ex. M26
(7) Sri G. Selvaraj (CR. No. 9/92)	— Ex. M27
(8) Sri S. Subbaramu (CR. No. 11/92)	— Ex. M29

(29) Further it has been admitted by the management that all the 1st parties have been acquitted in their respective criminal cases on he charge of filing false document. In such circumstances when the management had not placed any material to substantiate their stand, namely since the 1st parties had filed some false or bogus certificates to get their appointment and since they had been arrested in concerned criminal cases they abandoned the work and refusal of work as pleaded by the 1st parties could be refused cannot be accepted.

(30) It had been contended by the 1st parties that they were orally terminated, which was illegal. I find some force in the said contention. Because, even the cited case of the 2nd party i.e. the judgement of Hon'ble High Court of Patna reported in 1989 II LLJ page 294 would give support to the above said contention of the 1st parties. In the head note at page 295 of the above cited case, it had been noted as concised note of observation at paragraph 11, 12 and 13 of the cited judgement as follows :

> "The bank at no stage claimed to have dismissed or discharged the workman. There was no written order of discharge, dismissal or termination. In the absence an order of dismissal, discharge or termination the management cannot lead evidence before the Tribunal."

(31) To make the facts of the present case to fit into the above cited decision, we can point out that the management in the present case also not averred or proved that all the above said 1st parties 1 to 11 had been terminated on their misconduct or any other charges. But on the other hand the management had, all along taken a stand namely there was no question of dismissal or termination as the 1st parties themselves had abandoned their work. But the said contention is negatived by me on the reasons given above. Therefore, oral terminations of the 1st parties also amount to be a dismissal and hence I am of the view that the oral refusal to give work to the 1st parties or striking of their names in list II as admitted by the 2nd party without giving any valid reasons would amount to a dismissal and the 1st parties are entitled to the benefits under Section 25-F. Because the Hon'ble High Court of Rajasthan in a case between (Municipal Board Marwar MUNDWA and Industrial Tribunal and others) reported in 1988 (58) FLR page 469 and the Hon'ble Supreme Court in a case reported in 1978 I LLJ page 1 (Delhi Cloth and General Mills Ltd. v. Shambnunath Mukherjee and others) as relied on by the learned counsel for the 1st parties, have laid down the legal principles namely striking of the name of a workman would amount to be a termination as defined under the I.D. Act.

(32) Again as I discussed above, even if we consider for argument sake that the workmen 1 to 11 herein were working as daily wagers or temporary mazdoor or Ticca mazdoor, the above cited decisions on various Hon'ble High Courts as well as our Hon'ble Supreme Court would show that temporary Ticca mazdoors would be entitled for benefits under Section 25-F as their termination would amount to be a retrenchment under Section 2(oo) of the I.D. Act. As pointed out by the learned counsel for the 1st parties the same principles had been laid down in 1995-II LLJ Page 333 (Puniab State Seeds Corporation, Chandigarh and Labour Court, Jullundhar and another) wherein the Hon'ble High Court of Punjab and Haryana had held at para 10 as follows :

> "Second argument of Mr. Hemantkumar is that the respondent workman was a casual and daily rated worker and, therefore, it was not necessary for the employer to comply with the requirement of Section 25-F (a) and (b) of 1947 Act. A look at Section 25-F along with Section 25(b) of 1947 Act shows that every employer is under a stautory obligation to give one month's notice or pay in lieu thereof and retrenchment compensation at the rate of 15 days average pay to a workman who has worked under him continuously for a period of one year and whose service is sought to be terminated by way of retrenchment. The I.D. Act 1947 is one of the social welfare legislations intended not only to maintain industrial peace and harmony but also to protect the rights of the employees covered by the term workman as defined in Section 2(s) of the Act. Neither Section 2(s) nor Section 25-F of the Act refers to the source of recruitment of the employee nor it refers to his status or nature of employment. It does not even refer to the mode of payment of wages. By applying the golden rule of inter pretation of statutes, it has to be held that the provisions of Section 25-F are to be complied by the employer in case of retrenchment of a workman irrespective of the fact that the workman is permanent or temporary or casual or daily wage earner. The status of the employee has no relevance in the context of applicability of Section 25-F of the Act. The only thing which the employee is required to prove for invoking applicability of Section 25-F is that he

was worked under the employer for 240 days within a period of 12 months preceding the date of termination of service. He is not required to show that he was in regular service or that he was holding a post in substantive capacity or that he was a temporary employee. In whatever capacity the employee may be working, it is obligatory for the employer to comply with the condition precedent enumerated in sub-section (2) 25-F. Question relating to applicability of Section 25-F in the case of casual or seasonal workmen should be treated as concluded in view of the Supreme Court decision in L. Robert D'Souza v. The Executive Engineer, Southern Railway 1982-I-LLJ Page 330. In that case Supreme Court specifically rejected an argument that the provisions of Section 25-F are not attracted in the cases of casual or daily rated employees. While repelling such a submission the Supreme Court observed (page 345). 'There is no dispute that the appellant would be a workman within the meaning of expression in Section 2(s) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first conditions of Section 25-F that appellant is a workman who has rendered the service for not less than one year under the Railway Administration, an employer carrying on an industry, and that his service is terminated which for the reasons hereinabove given would constitute retrenchment. It is immaterial that he is a daily rate worker. He is either doing manual or technical work or his salary was less than Rs. 500/- and the termination of his service does not fall in any of the excepted categories. Therefore, assuming that was a daily rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the expected categories, not withstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly, the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment, the order of termination would be illegal and invalid."

(33) To make the facts of the present case suitable to that of the above cited decision, and as I pointed out earlier, the 1st party workmen 1 to 11 had not only pleaded the service for a continuous period of more than 240 days (i.e.) from April '80 to December '82 but also proved and substantiated the same through oral and documentary evidence.

(34) Of course it is true that in a case relied on by the 2nd party reported in AIR 1994 Page 1046 (Maharashtra State Co-operative Cotton Growers' Marketing Federation Ltd. and another Appellants v. Maharashtra State Co-operative Cotton Growers Marketing Federation Employees Union and another respondent). The Hon'ble Supreme Court had observed at para 8 of the judgement that :

"Heence, the reliance placed on the two letter for contending that the seasonal employees who had put in 240 days of service were to be made permanent or that the appellant Federation had accepted them as perennial permanent employees is not well merited.....

"Therefore, to be treated as isolated instances and cannot be made the basis of the contention that the seasonal employees who have put in 240 days work should be made permanent perennial employees."

(35) But in the same judgement the Hon'ble Supreme Court mainly relied on more than one outstanding orders and on the conditions stated in the appointment orders had observed at para 9 (middle) as follows :

"It must in the first instance be remembered that the Model Standing Orders do not apply to seasonal employees. Secondly, the seasonal employees in the present case are governed by their own service conditions, which as pointed out above, have in material respects no relation to the service conditions of the perennial employees who are governed by the said Model Standing Orders. It is, therefore, incorrect to say that all the Model Standing Orders are applicable to the seasonal employees. By the appointment letter, the Model Standing Orders have only been incorporated in the other service conditions of the seasonal employees only to the extent that the specific service conditions of the seasonal employees are silent on the aspects covered by the Model Standing Orders and which orders would necessarily apply to the seasonal employees. The Model Standing Orders, therefore, are applicable to the seasonal employees mutatis mutandis. The Model Standing Order No. 4-B in particular will be inapplicable to the seasonal employees because of the very nature of their employment and hence it cannot be read into the service conditions of the seasonal employees. Lastly, a reading of the said Model Standing Order No. 4-B would itself make it clear that it is applicable to the perennial employees only. It speaks of temporary workmen in any establishment of a seasonal nature or in other establishment during a period of preceding twelve months. Admittedly, the appellant-federation's establishment is not of a seasonal nature. It is only some employees employed therein who are seasonal. Secondly, as far as the employees in the other establishments spoken of there, are concerned, they can only be such employees who are employed for perennial work but for more reason or the other are not allowed to complete 240 days in such perennial work."

(36) Therefore with respect I am of the opinion that the above said findings of our Hon'ble Supreme Court, relied on by the 2nd party would not be applicable to the facts of the present case. Because in the present case the 2nd party not filed nor relied on any Standing Orders or appointment orders.

(37) Further, even in AIR 1992 Supreme Court at Page 2151 (State of Haryana and others v. Piara Singh and others) as relied by the said party our Hon'ble Apex Court while dealing with a case of the temporary workers had observed as follows :

"If a casual labourer is continued for a fairly long spell-say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give best to the job."

(38) But again even in the case relied on by the management in a Civil appeal No. 7507/94 (M.G. Dalania & others v. Reserve Bank of India) C.A No. 7406/94 (Reserve Bank of India & another v. C.D. Chauhan & Others), C.A. No. 3232/95 Reserve Bank of India and Another v. Tulsibhai Fajalbhai Joshi and anothers) and C.A. No. 3189/95 (Tulsibhai Joshi and Another v. Reserve Bank of India and Anothers). Our Hon'ble Supreme Court based on the terms of settlement and on the materials placed in that case had held on 28-11-1995 (at pages 12, 13 & 14 of that judgement) that :

"Sri Shishodia has urged that each of the petitioners had worked as ticca mazdoors for more than 280 days in an year. We find it difficult to accept this contention. As noticed earlier, a ticca mazdoor was being engaged only in the contingency of a regular mazdoor remaining absent which shows that ticca mazdoors were not being engaged every day. They used to be engaged only on those days on which there was need of a mazdoor in the place of a regular mazdoors who was absent. It cannot, therefore, be said that there was need for additional posts of regular (Page 13) mazdoors against which the petitioners could seek regularisation. Moreover,

the question whether there was a need for creation of additional posts of regular mazdoors at the Ahmedabad centre of the bank and what was the extent of that need is a matter which the bank alone could determine. This matter has been dealt with in the settlement dated July 25, 1995, and in accordance with the said settlement, additional posts of regular mazdoors have become available and the petitioners have been regularised against those posts with effect from May 31, 1994. The direction by the court for regularisation of the petitioners with effect from October 1, 1987 or January 1, 1991 is, in substance, a direction to the Bank to create an equal number of additional posts of regular mazdoors from these dates. Such a direction is impermissible

we cannot also lose sight of the fact that the settlement dated July 25, 1995 arrived at between the management of the bank and the employees Union, covers regularisation of adhoc daily wage employees including theca mazdoors in the various centres of the bank in the country. The object of the settlement is to find a solution to the problem of regularisation of such employees in order to secure industrial peace and harmony. A direction for regularisation in respect of some employees in one centre of the bank which runs contrary to the said settlement is bound to create dissatisfaction and disharmony amongst other employees similarly situated who are not granted similar (at page 14) relief. This would defeat the object of the settlement.

For the reasons aforementioned, the directions given by the High Court regarding regularisation of the petitioners cannot be upheld and the petitioners will have to be treated as having been regularised with effect from May 31, 1994 from which date they have been regularised as per the settlement dated July 25, 1995 . (A xerox copy of the above said judgement has been filed by the 2nd party).

(39) Therefore, when we consider the facts of the present case with respect, I opined that the observation made by our Honourable Supreme Court in the above cited decision regarding the temporary workmen cannot be applicable to the facts of the present case. Because as I discussed above in the present case all the 1st parties workmen had put continuous service of about 1,005 days from April 1980 to December 1982 and that the 2nd party had not relied on any agreement between parties not proved that the 1st parties had intentionally abandoned their work for continuous period. But on the other hand the workmen had requested the 2nd party to reinstate them, since they had not been allowed to work on the ground of alleged police complaint against them.

(40) Again the further argument of the 2nd party is in line with as if the parties had been terminated on their misconduct viz., production of false school certificates to prove their date of birth and qualification and as if protection under I.D. Act is given only to false termination and not misconduct To seek support of these argument the 2nd party had relied on a decision of Honourable High Court of Karnataka reported in ILR 1986 Karnataka page 2372 (Management of City of Bangalore Municipal Corporation Employers Co-operative Society Ltd., V. E. V. Raju) wherein it is observed at para 11 as follows :

> "The protection given to the workman in industrial law is not for his misconduct but against unlawful termination of his services by the management. The only change brought about by the Industrial Dispute Act is that whereas in common law an employer could dismiss a man on a months notice or a months wages in lieu of notice, he cannot dismiss his employee even on good notice except at the risk of having to reinstate him and pay him a large sum should the Industrial Tribunal find that the dismissal was not proper."

(41) But in the present case the 2nd party not even attempted to place or prove any misconduct against the 1 to 11 1st parties. But on the other hand it had been admitted by the 2nd party that all the 1st parties had been acquitted by the competent Criminal Court in all Criminal cases registered against them on the police complaint filed by the 2nd party on the alleged false complaint. Therefore, with respect I hold that the 2nd party cannot succeed on the above said argument or to place reliance on the said decision reported in ILR 1986 at page 2372. Therefore, as we discussed above, the facts placed before us coupled with the points of law would make us for an easy conclusion that concerned 1 to 11-1st parties are workmen as deemed under section 2(s) read with section 2(A) of the I.D. Act.

(42) Hence, the next point to be considered could be whether the termination of the 1 to-1st parties would come under the misc'ner of section 2(oo) of I.D. Act. When we peruse the definition of the word retrenchment under section 2(oo) of the Act, it would be clear that the legislatures are very careful enough to construct viz., "retrenchment" means termination by the employer of a service of the workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action, but does not include

(a) xxxx
(b) xxxx
(c)xxxx
(d) xxxx

(Exclusive portion omitted)

Particularly we have to concentrate on the word "for any reason whatsoever."

(43) So far the facts before us are concerned, the 1st parties-1 to 11 workmen are neither been punished nor terminated on any disciplinary action or suited within the excluding four clauses 'a to c'. The management had not proved their plea namely abandonment of service by workman. Hence either not allowing workman to do their work or any form of termination would naturally fit in within the purview of the word "for any reason whatsoever" suitably fixed by the legislature in section 2(oo) of the Act. But the 1st parties claimed that the management had orally terminated them. On the other hand it was contended by the management that since the 1st parties were working as theca mazdoors as temporary workers the terminology of termination found in section 2(oo) of the I.D. Act would not be applicable.

(44) But as relied on by the learned counsel for the 1st parties in 1989 LLJ (State Bank of India vs. United Bank of India and others) the Honourable High Court of Patna had given a judgement stating that oral termination but without any written order or termination, would also come under the definition of Section 2(oo) of the I.D. Act.

(45) I wish to quote the wordings of their lordship from para 13 in the above cited decision as follows :

> "Because of the language of S. 2(oo) of the Act and the expansive meaning given to that Section by courts there may be termination even in case where no written order of termination has been issued. But in my view, the requirements or conditions are not identical for an order of dismissal or discharge. Merely because management has refused to take work from a workman, it will not amount to the dismissal or discharge of such workman, although it may amount to his retrenchment within the meaning of Section 2(oo) of the Act."

(46) Again it is also observed in 1981 II LLJ page 382 (Between Tapan Kumar Jana v. Calcutta Telephones) by the Honourable High Court of Calcutta as follows :

> "The reason given by the learned Judge in holding that the termination of service of the appellant, who was only a casual labourer, was not retrenchment, does not appeal to us. In our view, the learned judge has misconceived the principle laid down by the Supreme Court in Sundara Moneys case (Supra). The observations of Krishna Iyer, J. which have been set out above unmistakably supports the view we have taken, that termination of service of a workman for any reason whatsoever will amount to retrenchment within the meaning of the defi-

nition of the term as given in Section 2(oo) of the Act including the automatic termination of the service of a workman, who is appointed for a fixed period, on the expiry of the period. Sundara Money's case (1976 (1) LLJ-P-478) and the observations of Krishna Iyer, J., cannot, in our opinion, be understood to be not applicable to the termination of service of a workman who is a casual labourer, simply because his service is not for a fixed period but for a particular job and terminates on the completion of the job. In our opinion, if any distinction is made between the termination of service on the expiry of a fixed period and termination of service on the completion of a particular work, the very intention of the legislature in bringing within the ambit of "retrenchment" all kinds of termination of service of workmen for any reason whatsoever will be frustrated. No such distinction made by the learned Judge between the two kinds of termination of service is possible to be made in the face of the clear and unambiguous language of the definition of "retrenchment" as embodied in Section 2(oo) of the Act."

(47) Further, as I quoted supra, our Honourable Apex Court in 1985 (4) SCC Page 201 (H. D. Singh V. Reserve Bank of India and others) as direct authority to the facts of the present case has given a clear verdict that the ticca mazdoor also would be entitled to get the entire benefits under Section 2(oo) of the I.D. Act.

(48) Therefore it is clear from the above cited authorities that refusal of work by the management to the workman in all the 11 cases, as the facts placed before us would reveal, is a retrenchment Under Section 2(oo) of the Act and hence I hold that all the workman are entitled to get the benefits of Section 2(oo) of the I.D. Act.

(49) I have already discussed as to how the 11 workmen before us are the workmen as defined under section 2(S) read with Section 2(A) of the Industrial Dispute Act. There cannot be any dispute among the parties that the II Party Bank is an industry within the meaning of I.D. Act. Therefore, when we carefully perused the above cited decision of the higher courts including the Honourable Supreme Court when a workman have been retrenched would be entitled to get all the benefits Under Section 25(F) of the Act. Section 25(F) of the Act would speak as follows :

"Conditions precedent to retrenchment of workman :— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until :—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen day's average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette).

The above said definition had fixed some duties and conditions for an employer to be followed before effecting any retrenchment of a workman. But, as we discussed earlier, in the present case, the employer has neither given any notice nor paid any retrenchment compensation before retrenching their employee namely the workmen before us. As it is posted out earlier/the contention of the II party for not considering them as workman as defined under the Act cannot be accepted at all. Therefore I opined that, after arriving at a conclusion to negative the above said contention of the II party Bank, it would be proper and easy for this Tribunal to hold that the retrenchment "for any reasons whatsoever" as against the 11 workmen herein, affected by the II party Bank, is invalid under law.

Because the following decisions as relied on by the learned counsel of the I party workmen would lay down concrete principles to that effect.

In 1985 (4) Supreme Court cases page 201 our Honourable Supreme Court at concluding paragraph No. 15, given a following clear verdit.

"We set aside the order of the Industrial Tribunal and hold that the striking off the name of the appellant from List II amounted to retrenchment under Section 2(oo) of the Act and was in violation of Section 25-F. We direct the first respondent-Bank to enlist the appellant as regular employee as Ticca Mazdoor, to reinstate him and pay him his back wages up-to-date."

Subsequently the Hogourable High Court of Rajasthan in a case reported in 1988 (56) page 469 (Municipal Board, Marwar Mundwa Vs. Industrial Tribunal and others) had laid down the same legal principle in the head note as follows :

"Industrial Disputes Act, 1947, Section 25F-Employee daily wages continued in service without any break for over 245 days-Termination of services hereafter Section 25-F attracted. No notice nor any compensation under Section 25-F paid to employee-Termination of service violated Section 25-F-Order of termination Void-Employee entitled to re-instatement with back wages."

Again in a recent judgement of our Honourable Apex Court reported in 1995 2 LLJ page 333 (Punjab State Seeds Corporation, Chandigarh and Labour Court, Jullundher and another) (relevant portion had already been quoted at page No. 16 of this Award). It is held at para 10 that Section 25-F of I.D. Act had to be followed by the employer in case of retrenchment of workman and any failure would make the termination void and violation of Section 25(F) of Industrial Dispute Act.

Therefore, after careful reading of the said decisions I hold that the termination of 11 workmen before us by the II Party Bank is invalid under law and liable for an order of setting aside.

Therefore, at this stage we have to next consider as to whether the employees herein are entitled for any order of reinstatement with monetary benefits. It is well decided principle of law that when a termination of an employee is held invalid under law the employee under the dispute is entitled for an order of reinstatement with full backwages from the date of termination till the date of reinstatement. In a case of similar facts, our Honourable Supreme Court had given a strong verdict, reported in 1985 (4) Supreme Court Cases page 201 (H. D. Singh Vs, Reserve Bank of India and others) for an order of reinstatement with backwages "Up-to-date" (relevant para already quoted in page No. 12 in this award).

Because in these cases neither the management through any of the records nor any one of the MWs through their oral evidence had proved that the 11 workmen before us were gainfully employed since the date of termination of the service. They had not even pleaded the same.

But on the other hand all the workmen not only pleaded but also spoken in their evidence. At page No. 6 of the Claim Statement of each workman it is stated as follows :

"The workmen is not gainfully employed after his wrongful termination from the service and is over aged to join any fresh employment."

To substantiate the above said pleadings, the workman in CR No. 1/92 namely Sri S. Mani, Sri M. Rajendran in CR No. 3/92, Sri R. Chandra Shekar in CR 4/92 and Sri M.E. Nagaraja in CR No. 5/92 had deposed in their respective evidence that after termination they were not doing any

work. But workmen Sri R. Krishnappa in CR No. 2/92, Sri A. Alexandar in CR No. 6/92, Sri R. Sethu in CR No. 7/92, Sri R. Radhakrishnan in CR No. 8/92, Sri G. Selvaraj in CR No. 9/92, Sri N. Bhooshanam in CR No. 10/92 and Sri S. Subbaramu in CR 11/92, though admitted in cross-examination that they were getting very meagre amount by doing some cooly work like painting, cooking, printing, supplying milk etc., I am of opinion that these admissions regarding their very little amount of income will be in no way take away their rights even under law of getting full backwages. Therefore, I am of opinion that all the 11 workmen are entitled for an order of reinstatement with full backwages.

AWARD

In the result the common award is passed in CR No. 1/92 to CR No. 11/92 that the action of the management of Reserve Bank of India, Bangalore in terminating the Services of 1st party workmen concerned in CR No. 1/92 to CR No. 11/92, ticca mazdoor, is not justified and that the II party management in all these case, is directed to reinstate all the workmen concerned in the above cases to the post which they held on the date of termination in accordance with the prevailing rules and conditions of service and to calculate and pay full backwages to each of the above said 11 workmen from the date of termination till the date of reinstatement and to pay the accumulated past backwages within a period of 6 months from the date of this award in lumpsum, and the 1st parties are directed to bear their own cost. Submit to the Government.

(Dictated to P.A. transcribed by him, corrected by me and signed on this Thursday the 18th day of December, 1997.)

K. MOHANCHANDRAN, Presiding Officer

नई दिल्ली, 6 जनवरी, 1998

का.आ. 292 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, अजमेर के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अजमेर (राज.) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5/1/98 को प्राप्त हुआ था।

[संख्या एल-12012/278/95-आई.आर.बी (बी-I)]
पी.जे. माईकल, डैस्क अधिकारी

New Delhi, the 6th January, 1998

S.O. 292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Ajmer (Rajasthan), as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, Ajmer and their workman, which was received by the Central Government on 5-1-1998.

[No. L-12012/278/95-IR (B-I)]
P. J. MICHAEL, Desk Officer.

अनुबन्ध

न्यायालय श्रम न्यायाधीश एवं औद्योगिक न्यायाधिकरण, अजमेर (राज.)

सी आई टी आर 14/97

रेफरेंस न. एल-12012/278/95 आई.आर.(बी)

दि. 23-6-97

क्षेत्रीय सचिव, स्टेट बैंक आफ इंडिया स्टाफ एसोसिएशन एच.एम.टी. शाखा, अजमेर, (राज.) —प्रार्थी

बनाम

1. अध्यक्ष भारतीय स्टेट बैंक स्थानीय क्रियान्वयन समिति भारतीय स्टेट बैंक मुख्य शाखा, अजमेर

2. सहायक महाप्रबन्धक भारतीय स्टेट बैंक आंचलिक कार्यालय क्षेत्र-5, नेहरू पैलेस, टोंक रोड, जयपुर ——अप्रार्थीगण

समक्ष

श्री हरि सिंह पू. अस्तानी, आर.एच.जे.एस.
पीठासीन अधिकारी

प्रार्थी की ओर से श्री पी.डी. अग्रवाल

अप्रार्थी की ओर से श्री ज.के. यादव

(बहस के दिन उपस्थित)
दिनांक 12-12-97

अवार्ड

1. केन्द्र सरकार द्वारा अधिनिर्णयार्थ निम्न विवाद इस न्यायाधिकरण को प्रेषित किया गया है :

"Whether the action of the Chairman of Local Implementation Committee, State Bank of India main Branch Ajmer in terminating the services of Shri Raj Kumar, canteen boy w.e.f. 9-7-89 is legal and justified? If not, what relief concerned, employee is entitled to?"

2. प्रार्थी द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम संक्षेप में इस प्रकार प्रकार है :—

(1) यह कि प्रार्थी को दि. 1;6-87 को नियोजक बैंक की स्थानीय क्रियान्वयन समिति ने नियमित आधार पर कैंटीन बॉय के पद पर नियुक्त किया था और उसने बिना किसी अवरोध के 8-7-89 तक कार्य किया और उसे बिना कोई सूचना या आधार के 9-7-89 को सेवा से पृथक कर दिया और अप्रैल, मई, जून 89 का वेतन भी नहीं दिया।

(2) यह कि दि. 9-1-91 को प्रबंधकों एवं यूनियन के मध्य लिखित में समझौता हुआ जिसके अन्तर्गत स्थानीय क्रियान्वयन समिति द्वारा संचालित कैंटीन को बैंक प्रशासन द्वारा संचालित करने का निर्णय लिया गया और उसके आलोक में जो कर्मचारी 5-7-90 तक कैंटीन बॉय के पदों पर कार्यरत थे उनको स्थाई नियुक्ति हेतु प्राथमिकता और वरीयता दी जानी थी। प्रार्थी को द्विपक्षीय समझौते का कोई लाभ नहीं दिया गया और दि. 24-9-92 को इस हेतु लिये गये साक्षात्कार में भी प्रार्थी को नहीं बुलाया गया।

(3) यह कि भारतीय स्टेट बैंक की मुख्य शाखा में कैंटीन बॉय का एक पद काफी समय से रिक्त पड़ा हुआ है।

(4) अनुतोष के रूप में प्रार्थी ने यह प्रार्थना की है कि श्रमिक की एक अप्रैल, 89 से सेवामुक्ति को निष्प्रभावी और शून्य करार देते हुए निरंतरता के साथ उसे कैंटीन बॉय के पद पर स्थाई नियुक्ति दी जाये।

3. नियोजक बैंक द्वारा प्रस्तुत जवाब का तात्विक सार यह है कि कैंटीन स्थानीय क्रियान्वयन समिति द्वारा नियुक्त स्टाफ वेलफेयर कमेटी द्वारा संचालित की जाती थी और उसके कार्य-कलापों में नियोजक बैंक कोई हस्तक्षेप नहीं करता और स्थानीय क्रियान्वयन समिति का स्वतंत्र अस्तित्व है। प्रार्थी को 1-6-87 को उत्तरदायी बैंक द्वारा कैंटीन बॉय के रूप में कभी भी नियुक्ति नहीं दी गयी और प्रार्थी ने उत्तरदाता बैंक के यहां 8-7-89 तक कार्य भी नहीं किया है और बैंक में कभी कार्य नहीं किया और ऐसे मामलों में बैंक की कोई भूमिका नहीं है इसके अतिरिक्त दि. 5-7-90 को प्रार्थी स्थानीय क्रियान्वयन समिति के मस्टर रोल पर ही नहीं था इसलिये बैंक ने सेवा पाने के लिये पात्र उम्मीदवार नहीं था। दि. 9-1-91 को संपन्न सैटलमेंट के तहत केवल वे ही कर्मचारी नियुक्ति के पात्र थे जो 5-7-90 को कैंटीन में कार्य करते थे और ऐसे पात्र व्यक्तियों को ही उत्तरदाता बैंक ने साक्षात्कार हेतु बुलाया था और प्रार्थी उसके लिये पात्र नहीं था इसलिये साक्षात्कार हेतु उसे नहीं बुलाया गया था। नियोजक ने प्रार्थी का प्रार्थना पत्र विधि-विरुद्ध होने से निरस्त करने की प्रार्थना की है।

4. सचिव स्थानीय क्रियान्वयन समिति ने अपने जवाब में विवादित मामले के संबंध में तात्विक बिन्दुओं पर अपनी अनभिज्ञता प्रकट की है।

5. प्रार्थी ने साक्ष्य में स्वयं को पेश किया और नियोजक की ओर से श्री आर. सी. कोठारी को पेश किया गया है। मैंने उभयपक्ष के तर्क सुने तथा पत्रावली का सावधानी से अवलोकन किया। प्रार्थी के विद्वान प्रतिनिधि श्री पी.डी. अग्रवाल ने मेरे समक्ष निम्न तर्क प्रस्तुत किये :—

(1) यह कि प्रार्थी जिस कैंटीन में काम करता था था वह प्राइवेट ठेके पर थी जिसके लिये विद्युत, पानी, फर्नीचर, क्रॉकरी, ईंधन आदि नियोजक बैंक आपूर्ति करता था और स्थानीय क्रियान्वयन समिति के मार्फत प्रबंधक कैंटीन चलाते थे और प्रार्थी ने 240 दिन से अधिकार्य कर लिया और सैटलमेंट के तहत प्रार्थी को साक्षात्कार हेतु बुलाया जाना अनिवार्य था किन्तु उसे नहीं बुलाकर उसे हक से वंचित कर दिया गया।

(2) यह कि प्रार्थी ने अप्रैल, मई, जून 89 व 1 जुलाई से 8 जुलाई तक काम किया किन्तु उसका उसे वेतन नहीं दिया गया जिस संबंध में उसने कूरियर सेवा और रजिस्टर्ड डाक से पत्र भेजे और उसे 8-7-89 को शाम को मौखिक रूप से कह दिया गया कि कल से काम पर नहीं आना है।

(3) यह कि यदि प्रार्थी को उक्त अवधि का वेतन दिया जाता तो वह 9-6-89 तक कार्य पर उपस्थित होने के के कारण साक्षात्कार के लिये पात्रता प्राप्त कर लेता जिससे वंचित करने के लिये उसे हटाकर चयनित होने के उसके अधिकार से उसे वंचित कर दिया गया।

(4) यह कि प्रार्थी को 100/- रु. प्रतिमाह वेतन दिया जाता था और मुख्य विवाद न्यायालय को यह तय करना है कि सैटलमेंट में "एज आन" (as on) व "एज एट" (as at) से क्या तात्पर्य निकलता है और नियोजक बैंक ने 2-5-91 के परिपत्रों की अनुपालना नहीं की।

6. नियोजक बैंक की ओर से उसके प्रतिनिधि श्री जे.के. यादव ने निम्न तर्क प्रस्तुत किये :—

(1) यह कि नियोजक बैंक ने प्रार्थी को कभी भी अपने नियोजक में नहीं रखा। स्थानीय क्रियान्वयन समिति के अध्यक्ष और सचिव के अलावा मामलों पर निर्णय के लिये अन्य सदस्य भी होते हैं और सचिव कर्मचारियों का प्रतिनिधि होता है और शाखा मैनेजर उसका पदेन अध्यक्ष होता है।

(2) यह कि स्थानीय क्रियान्वयन समिति सचिव ने स्वयं ने दि. 21-5-91 को यह पत्र लिखकर दिया कि 5-7-90 को चार श्रमिक काम कर रहे थे और उसमें प्रार्थी श्रमिक का नाम नहीं था और नियोजक प्रबन्धक का ऐसी नियुक्ति से कोई संबंध भी नहीं है।

(3) यह कि नियोजक प्रार्थी के विरुद्ध किसी प्रकार का कोई दुराग्रह/पूर्वाग्रह नहीं रखता था और नियोजक बैंक के यहां कोई स्वीकृत पद न होने से प्रार्थी को कोई नियुक्ति का अधिकार प्राप्त नहीं होता।

7. प्रार्थी ने अपने तर्कों के समर्थन में मेरा ध्यान 1995 (3) सुप्रीम कैसेज टुडे 248 पैरीमलचंद्र राह/एलआई सी की ओर आकर्षित किया।

8. नियोजक पक्ष के प्रतिनिधि ने मेरा ध्यान 1996 लैब आई.सी. सुप्रीमकोर्ट पेज 1048 एम्लायर मैनेजमेंट आफ आर.बी.आई./देअर वर्कमैन एवं 1997 लैब आई.सी. मद्रास पेज 208 इंडियन ओवरसीज बैंक/इंडियन ओवरसीज बैंक स्टाफ कैंटीन वर्कर्स यूनियन की ओर आकर्षित किया।

9. सर्वप्रथम हम प्रार्थी की साक्ष्य का अवलोकन करेंगे। प्रार्थी ने बयान के रूप में प्रस्तुत अपने शपथ पत्र में तात्विक सार में क्लेम में उल्लिखित तथ्यों को दोहराते हुए कहा है कि उसके साथ काम करने वाले तीन व्यक्तियों को इन्टरव्यू लेकर नियुक्ति दी गयी थी किन्तु उसे वंचित रखा गया था। प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि उसे स्थानीय क्रियान्वयन समिति के सचिव ने कैंटीन बाय के रूप में लगाया था और उसी के द्वारा उसे चैक द्वारा पारिश्रमिक दिया जाता था वह सचिव कर्मचारी वर्ग से संबंधित है और सचिव स्वयं क्लर्क होता है, उसके अनुसार

उसे 9-7-89 को आर. एन. मेहता अध्यक्ष ने हटाया था ।

10. नियोजक बैंक के गवाह श्री कोठारी ने भी अपने शपथ पत्र में तात्विक रूप से क्लेम के जवाब में उल्लिखित तथ्यों को दोहराया है । प्रतिपरीक्षा में इस गवाह ने प्रदर्श डब्ल्यू-1 और डब्ल्यू-2 प्रलेखों की स्थिति से इंकार नहीं किया है । इस गवाह के अनुसार वर्तमान में तीन कैंटीन बॉय कार्य कर रहे हैं और पद रिक्त है या नहीं इसका निर्धारण आंचलिक कार्यालय करता है और स्थानीय क्रियान्वयन समिति के निर्णय के अनुसरण में प्रार्थी को कैंटीन बॉय के रूप में लगाया गया था ।

11. साक्ष्य का विश्लेषण एवं पत्रावली में उपलब्ध प्रलेखों का परीक्षण करने से पूर्व उभयपक्ष द्वारा प्रस्तुत न्यायिक दृष्टांतों में दी गयी व्यवस्था पर गौर करना उपयुक्त होगा । प्रार्थी द्वारा प्रस्तुत एल०आई०सी० के उक्त न्यायिक दृष्टांत उसमें दर्शाये गये तथ्यों व पृष्ठभूमि में भिन्नता के कारण प्रार्थी की उल्लेखनीय सहायता नहीं करता । उस निर्णय का समग्रता से पढ़ने पर यह स्थिति प्रकट होती है कि निगम का वास्तविक और प्रभावी नियंत्रण था । उक्त न्यायिक दृष्टांत में पृष्ठ सं० 252 के प्रथम कॉलम में माननीय उच्चतम न्यायालय के अन्य निर्णय को उद्धरित किया गया है जिसमें यह अंकित किया गया है कि :—

"The Correct approach is to consider whether having regard to the nature of the work, there is the control and supervision of the employer."

ऐसी स्थिति प्रश्नगत विवाद के संबंध में नहीं पायी जाती है । इसके विपरीत नियोजक बैंक द्वारा प्रस्तुत आर०बी० आई० के उक्त न्यायिक दृष्टांत में प्रार्थी द्वारा प्रस्तुत न्यायिक दृष्टांत को रेफर करते हुए और उस पर विचार करते हुए यह व्यवस्था दी गयी है कि बैंक के कैंटीन में नियोजित श्रमिकगण बैंक के कर्मचारी नहीं कहलायेंगे । इस न्यायिक दृष्टांत में माननीय उच्चतम न्यायालय ने यह व्यवस्था भी दी है कि जब बैंक कानूनी दृष्टि से कैंटीन चलाने के लिए बाध्य नहीं है न उसका उस पर प्रभावी नियंत्रण है और न पर्यवेक्षण है तब ऐसी स्थिति में कैंटीन के कर्मचारियों को बैंक का कर्मचारी नहीं माना जा सकता और इसी आशय की व्यवस्था माननीय मद्रास उच्च न्यायालय ने इंडियन ओवरसीज बैंक के उक्त न्यायिक दृष्टांत में दी है और यह स्पष्ट किया है कि कैंटीन के कर्मचारियों और बैंक के मध्य नियोक्ता एवं श्रमिक के संबंध नहीं बन जाते है । पत्रावली में प्रदर्श डब्ल्यू-2 प्रलेख का जब अवलोकन करते है तो यह पाते है कि 30-6-87 को स्थानीय क्रियान्वयन समिति की आयोजित बैठक में 14 सदस्य उपस्थित थे और उन 14 सदस्यों की समिति ने सात व्यक्तियों को 150 व 100 रु० प्रतिमाह के भुगतान पर कैंटीन ब्वॉय रखने का प्रस्ताव पारित किया था । कमेटी के गठन से यह स्थिति प्रकट होती है कि अकेला नियोजक बैंक कैंटीन ब्वॉय को नियुक्त करने के लिए सक्षम नहीं था किन्तु इस संबंधी निर्णय बड़ी संख्या में सदस्यों द्वारा सामूहिक रूप से लिये जाते थे । प्रदर्श डब्ल्यू-1 प्रलेख में स्टाफ कैंटीन के अधिग्रहण के बारे में उल्लेख पाया जाता है और उसमें यह लिखा गया है कि जो कर्मचारी 5-7-90 तक स्थानीय क्रियान्वयन समिति द्वारा नियमित आधार पर लगाये गये थे उनका प्रार्थना पत्र बैंक प्रारूप पर प्राप्त कर भिजवाया जाय ताकि साक्षात्कार की तिथि तय की जा सके यह पत्र नियोजक बैंक के आंचलिक कार्यालय जयपुर से जारी किया गया है ।

12. नियोजक बैंक और यूनियन प्रतिनिधियों के बीच उच्च स्तर पर 9-1-91 को सेटलमेंट हुआ इस तथ्य का प्रार्थी की ओर से दौराने बहस या जिरह प्रतिकार नहीं किया गया है । सुविधा के लिये इस पर प्रदर्श एम-1 अंकित किया गया है इस सेटलमेंट के पृष्ठ सं० 3 की मद सं० 3 में यह इकरार हुआ कि ऐसे व्यक्ति जिनका नियमित नियोजन स्टाफ कैंटीन में हुआ है और जो शाखाओं या कार्यालयों के रोल्स पर 5-7-90 को थे उन्हें बैंक के अधीनस्थ कार्य में नियोजन में लिये जाने पर विचार किया जायेगा । इस सेटलमेंट में महत्वपूर्ण तारीख 5-7-90 है और इस सेटलमेंट के अधीन दोनों पक्ष में यह सहमति हुई कि जो 5-7-90 को कैंटीन के रोल्स पर थे उनकी नियुक्ति के बारे में विचार किया जा सकता है अर्थात् वे नियुक्ति के लिए पात्र होंगे । पत्रावली में प्रदर्श एम-2 प्रलेख का जब अवलोकन करते हैं तो यह स्पष्ट होता है कि स्थानीय क्रियान्वयन समिति अजमेर के सचिव ने शाखा प्रबंधक को 21-5-91 को सूचित किया कि 5-7-90 को चार श्रमिक कार्य कर रहे थे जिनके नाम भी बताये गये थे किन्तु प्रार्थी श्रमिक का उसमें नाम नहीं है । इससे प्रकट होता है कि 5-7-90 को जो प्रदर्श एम-1 सेटलमेंट के अनुसार महत्वपूर्ण तारीख है प्रार्थी श्रमिक कैंटीन में कार्य ही नहीं करता था अतः सेटलमेंट के अनुसार उसे नियमित नियोजन के लिए कंसीडर किये जाने का अधिकार प्राप्त नहीं था और यह स्थिति स्वयं रेफरेंस और प्रार्थी के कथन से ही स्पष्ट हो जाती है कि प्रार्थी 9-7-89 के बारे कैंटीन में कार्यरत नहीं था । प्रार्थी स्वयं ने अपनी प्रतिपरीक्षा में यह कहा है कि उसे 9-7-89 को हटाया गया था । प्रार्थी के विद्वान प्रतिनिधि न्यायालय से यह अपेक्षा रखते है कि चूंकि बैंक ने प्रदर्श डब्ल्यू-1 में यह लिखा है कि जो 5-7-90 तक कैंटीन के कार्य करते थे उन्हें साक्षात्कार के लिये बुलाये जाने का अधिकार प्राप्त हो गया और उसे नहीं बुलाया गया । अतः न्यायालय के माध्यम से उसे नियमित कर दिया जाय । प्रदर्श डब्ल्यू-1 को हम आइसोलेशन (isolation) में नहीं देखेंगे किन्तु प्रदर्श एम-1 सेटलमेंट के आलोक में उसे देखा जायेगा । प्रार्थी को स्थानीय क्रियान्वयन समिति द्वारा 100/- रु० माहवार पारिश्रमिक दिया जाता था यह प्रदर्श एम-3 से भी प्रकट होता है और दौराने बहस प्रार्थी के विद्वान प्रतिनिधि ने इस स्थिति का खंडन नहीं किया । स्टेट बैंक ऑफ इंडिया किसी भी कर्मचारी को 100/- रु० माहवार वेतन दे यह बात मानने योग्य नहीं है और सौ रु० का मासिक पारिश्रमिक दिया जाना इस बात का द्योतक है कि

प्रार्थी नियोजक बैंक का कर्मचारी नहीं था और यह कैंटीन भी नियोजक बैंक स्वयं नहीं चलाती थी। इस आशय के नियोजक बैंक के गवाह श्री कोठारी के सशपथ कथन का जिरह में खंडन नहीं हुआ है। नियोजक के गवाह श्री कोठारी के शपथ पत्र की चरण सं० 7 से यह स्थिति प्रकट होती है कि अजमेर शाखा में संचालित कैंटीन का बैंक द्वारा अधिग्रहण 9-1-91 के समझौते के अंतर्गत किया गया। ऐसी स्थिति में जब कैंटीन का नियोजक बैंक ने अधिग्रहण ही कर लिया तब वस्तुतः स्थानीय क्रियान्वयन समिति निष्प्रभावी हो जाती है और वह ऐसी स्थिति में श्रमिक को वांछित अनुतोष नहीं दे सकती है और न नियोजक बैंक दे सकता है क्योंकि सेटलमेंट के अनुसार प्रार्थी निर्धारित तारीख को कैंटीन के रोल्स पर ही नहीं था और न प्रार्थी नियोजक बैंक का कर्मकार था। प्रदर्श डब्ल्यू-4 प्रलेख से यह स्पष्ट होता है कि नियोजक बैंक का कैंटीन से कोई प्रत्यक्ष संबंध नहीं है और सब्सीडी तक सीमित उसकी भूमिका है और उसमें यह भी स्पष्ट कर दिया गया है कि कैंटीन में कार्यरत व्यक्तियों का भुगतान यदि सब्सीडी से अधिक होता है तो वह स्थानीय क्रियान्वयन समिति को ही वहन करना होगा। इससे यह प्रकट होता है कि कैंटीन के श्रमिक बैंक के कर्मचारी नहीं थे और केवल कैंटीन की व्यवस्था हेतु बैंक एक निश्चित फंड से सब्सीडी दिया करती थी।

13. प्रार्थी ने क्लेम में उसे हटाये जाने वाले व्यक्ति का नाम नहीं बताया है और न ही अपने शपथ पत्र में बताया है। केवल जिरह में उसने तत्कालीन अध्यक्ष आर०एम० मेहता का नाम बताया है लेकिन उसे साक्ष्य में पेश नहीं किया है। नियोजक की श्रमिक के प्रति कोई द्वेषता या रंजिश की स्थिति प्रकट नहीं होती।

14. प्रार्थी पक्ष द्वारा दिया गया यह तर्क कि यदि प्रार्थी को अप्रैल, मई, जून, व 9 जुलाई 89 का वेतन दिया जाता तो 9-7-89 तक कार्य पर होने से वह साक्षात्कार के लिये पात्रता प्राप्त कर लेता, शक्तिविहीन है क्योंकि पात्रता का संबंध प्रदर्श एम-1 सैटलमेंट है जिसमें 5-7-90 को रोल्स पर होने की आवश्यकता बताई गई है। यदि प्रार्थी 5-7-90 को कैंटीन ब्वॉय के रूप में नियमित रूप से कार्य रहा होता तब साक्षात्कार में बुलाये जाने की पात्रता प्राप्त करता किन्तु स्वयं प्रार्थी के अनुसार यह 9-7-89 के बाद कार्य पर नहीं रहा। दि० 18-1-91 का परिपत्र क० पीईआर : आर : सीआईआर 7 भी प्रार्थी की सहायता नहीं करता क्योंकि उसकी चरण सं० 2(ii) में ही स्पष्ट कर दिया गया है कि ऐसे व्यक्ति, जो स्थानीय क्रियान्वयन समिति द्वारा कैंटीन में नियमित रूप से नियोजित थे और 5-7-90 को (न कि 9-6-89 को जैसा कि पूर्व में तय हुआ था), उन्हीं के मामले में ही अधीनस्थ कार्यालय में नियोजन के लिये विचार किया जायेगा।

15. अतः उक्त समस्त तथ्यों, प्रलेखों और परिस्थितियों तथा न्यायिक दृष्टांतों पर गौर करते हुए प्रेषित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि प्रार्थी ने अध्यक्ष स्थानीय क्रियान्वयन समिति द्वारा 9-7-89 को उसे हटाये जाने की स्थिति को सिद्ध नहीं किया है और यदि विकल्प में प्रार्थी को हटाया जाना मान भी लिया जाता है तब भी नियोजक बैंक द्वारा कैंटीन का कार्य अधिग्रहण करने के परिणामस्वरूप स्थानीय क्रियान्वयन समिति प्रार्थी को वांछित अनुतोष देने की स्थिति में नहीं है और न ही प्रार्थी नियोजक बैंक के कर्मकार के रूप में कोई अनुतोष प्राप्त करने का अधिकारी है फलतः प्रार्थी इस न्यायाधिकरण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं पाया जाता है।

अवार्ड आज दि. 12.12.1997 को लिखाया जाकर खुले न्यायालय में सुनाया गया। अवार्ड की प्रति नियमानुसार राज्य सरकार को वास्ते प्रकाशनार्थ प्रेषित की जावे।

हरि सिंह यू० असनानी, न्यायाधीश

नई दिल्ली, 8 जनवरी, 1998

का०आ० 293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला, नई दिल्ली के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[संख्या एल-12012/123/94-आई०आर० (बी० I)]
पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Patiala, New Delhi and their workman, which was received by the Central Government on the 7-1-1998.

[No. L-12012/123/94-IR (B. I.)]
P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANKU NAGAR, KANPUR.

Industrial Dispute No. 111 of 1995.

In the matter of dispute :

BETWEEN :

Shri A. K. Sexena C/o. P. B. Saxena 426-W-2 Basant Bihar, Kanpur.

AND

Regional Manager, State Bank of Patiyala, C-31, Cannaught Place, New Delhi.

APPEARANCES :

Shri B. P. Saxena for the workman and Shri S K. Jain for the Management.

AWARD

1. Central Government, Ministry of Labour, Vide its Notification No. L-12012/123/94-I.R. (B-3), dated 6-10-1995, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of State Bank of Patiala. New Delhi in dismissing the services of Shri A. K. Saxena, w.e.f 2-7-1993 is just and legal ?. If not, to what relief the workman is entitled ?"

2. There is a branch known as Birhana Road Kanpur branch of the opposite party State Bank of Patiala The concerned workman A. K. Saxena, was working as Head Cashier at this branch. He was issued a charge-sheet dated 20-8-1991 which runs as under :—

1. (a) That on 7-12-1990 you managed to get duplicate pass book issued of Saving Bank A/c. No. 2521 of Shri Hari Shanker Yadav by puting an application in your own hand addressed to the branch Manager and forging signatures of the depositor of account holder.

(b) Thereafter on 26-12-1990 and 8-1-1991 you withdrew Rs. 45000/- and Rs. 35000/- respectively from the saving bank account No. 2521 of Shri Hari Shanker Yadav through withdrawal forms on which you again forged signature of the depositor i.e. Shri Hari Shanker.

2. You borrowed Rs. 5000/- from Shri Hari Shanker Yadav a constituent of the bank which fact has been acknowledged by you in your written statement dated 23-4-1991. You are therefore alleged to have contravened instructions contained in Chapter I of system of Routine.

One T. S. Lakhra was appointed enquiry Officer. After completing enquiry he submitted his report on 30-6-1992, holding that charge No. 1(a) and (b) as proved whereas charge No. 2 as not proved. The Disciplinary authority agreeing with this report ordered for his dismissal by order dated 2-7-1993. Appeal was also dismissed. Feeling aggrieved the concerned workman has raised the instant industrial dispute.

3. In his claim statement the concerned workman had raised the point that the enquiry was not fairly and properly held. It was pointed out that enquiry Officer was not properly appointed. On facts it was denied that he had any hand in forged withdrawals of pass book and withdrawal of Rs. 45000/- and Rs. 35000/-. In the reply it was denied that enquiry was not fairly and properly held. Further it was alleged that it was the concerned workman who had perpiterated the fraud as contained in the charges 1(a) and (b).

In the rejoinder nothing new was alleged.

On the pleadings of the parties a preliminary issue regarding fairness of the domestic enquiry was framed. Vide finding dated 8-8-1997 it was held that enquiry was not fairly and properly held. Hence the management was given opportunity to prove the misconduct on merits.

At this stage it may be pointed out that as he enquiry Officer has found that charge No. 2 was not proved. It will not be necessary to examine this charge again. In other words it will be deemed that the applications against the concerned as far as in the charge No. 2 is concerned are not proved.

Now evidence adduced in respect of chasge No. 1 (a) and (b) may be examined.

In support of their case management has examined R. K. Gupta, then Head Cashier, M.W. 1, Shyam Sunder, Godown Keeper M.W. 2, the then Accountant Ashok Kumar Madan, M.W. 3, Sanjeev Kumar M.W. 4, the then accountant Mukesh Mishra M.W. 5, the then cashier, the then Assistant Accountant Banshi Dhar as M.W. 6, the then cashier-cum-clerk A. K. Yadav M.W. 7 and Hari Shanker Yadav M.W. 8, the account holder. Further the report of hand writing expert has been relied upon the genuineness of which has not been challenged by the concerned workman. In rebuttal there is evidence of the concerned workman A. K. Saxena W.W. 1.

As far as charge No. 1 (a) is concerned there is evidence of the then head clerk R. K. Gupta. However, when we read evidence of R. K. Gupta it will be evident that he has not implicated the concerned workman, in any manner. His evidence is that the concerned workman was posted there as Head Cashier. There was an account of Hari Shanker Yadav in this branch. He has further stated that he had received the application for preparation of duplicate pass book which was given to him by Amar Nath Mishra, the cashier clerk. He has further stated that after signing the duplicate pass book he had sent it to the concerned cashier. Thus from his evidence no hand of concerned workman in preparation of forged duplicate pass book or obtaining the same is to be fund. Further Hari Shanker Yadav has staged that he had not applied for duplicate pass book and also he did not get it. Further there is report of hand writing expert. In rebuttal there is evidence of A. K. Saxena W.W. 1 who had stated that he had no hand in the issuance of duplicate pass book. While answering finding of this issue this tribunal has pointed out in para (7) of the finding that application for issue of duplicate pass book was given by Hari Shanker Yadav himself and on this basis alone the concerned workman alone could not be held accountable. Once again in view of this admission of Amar Nath Mishra as given before the enquiry officer, I do not believe the version of management and hold that it was the account holder who had applied for issue of duplicate pass book and have received the same. Hence this charge is not proved.

Now charge no. 1 (b) may be taken up. On this point there is evidence of Shyam Sunder M.W. 2 the then record keeper-cum-godown keeper. He has stated that he cannot say if in the ledger of account holder Hari Shanker Yadav concerned workman had made any entry or not. In my opinion, this evi-

dence was hardly required as the concerned workman does not dispute the fact that entries in the ledger was made by him and further for this reason it was not necessary for the management to have obtained the opinion of hand written expert.

Ashok Kumar Madan the then accountant M. W. 3 has stated that he had passed the withdrawal form paper No. 6. There was no pass book before him at that time. He did not get the signatures of the customers verified as he was a known customer. In his cross examination he has admitted that when he passed the withdrawal form Hari Shanker Yadav was present.

Sanjeev Klmar M.W. 4 has stated about passing of withdrawal form paper No. 2 and at that time Hari Shanker Yadav was present.

Mukesh Mishra M. W. 5 was working as cashier. He has stated that Rs. 35000/- was paid by him to the signature holder. His evidence does not inculpate the concerned workman in any manner.

Banshidhar M. W. 6 and A. K. Yadav M. W. 7 have stated that they adopt the statement which they had given before the Enquiry Officer. Their evidence does not relate to forgery of the two withdrawals forms of actual withdrawal. Instead of it relates to some deposit which they claim to have made. In any case they do not inculpate the concerned workman in any manner.

Hari Shanker Yadav M. W. 8 had stated that he had not given the withdrawal form for Rs. 45000/- and Rs. 35000/-. However, he has not stated as to who would have done it.

In the end the management had relied upon the opinion of hand writing expert. I have already pointed out that the opinion of hand writing expert is not relevant as the concerned workman had not disputed the fact that he had made entries in the ledger of Hari Shanker Yadav in respect of these two items. However, he has stated that it was done in the usual course of business when withdrawal forms were received by him.

Thus the above mentioned evidence in no way proves that withdrawal forms were forged by the concerned workman or the money was pocketed by the concerned workman. If at all any loss has been caused it was due to Ashok Kumar Madan and Sanjeev Kumar M.W. 4 who had passed the two withdrawal form. They were not discrete while passing withdrawal form in as much as they did not care to verify the signatures on withdrawal form.

In the end my finding is that the considered workman had never perpeterated two withdrawals forms nor had received the money hence this charge is also not proved.

In view of above finding the punishment awarded to the concerned workman is bad in law.

The management has referred to the case of Union Bank of India versus M. L. Kureel 1994 (68) FLR 929 in which reinstatement was refused because of loss of confidence. The principle laid down in this case will not apply to the facts of the present case as in that case the labour tribunal had found that M. L. Kureel indulged in false hood and fabricating documents. Still the Tribunal had ordered reinstatement. It was in this context that it was found that there was loss of confidence. In the instant case because it has been found that none of the charges have been found proved against the concerned workman, hence question of loss of confidence does not arise.

In view of above discussion my award is that dismissal of concerned workman is bad in law and he will be entitled for reinstatement with back wages.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 8 जनवरी, 1998

का० आ० 294—औद्योगिक विवाद अधिनियम, 1947 (1947) का (14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्दन रेलवे, इलाहाबाद के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर 1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[संख्या एल-41011/78/89/डी०यू० (बी० I)]
पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, KANPUR as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Allahabad and their workman, which was received by the Central Government on 7-1-1998.

[No. L-41011/78/89-D.U. (B. I.)]
P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR.

Industrial Dispute No. 175 of 1990.

In the matter of Dispute :

BETWEEN :

Zonal working President Uttar Railway Karamchari Union, 96/196, Roshan Bajaj Lane, Ganeshganj, Lucknow.

AND

Divisional Railway Manager, Northern Railway, Allahabad.

APPEARANCE :

P. K. Tiwari for the Union and Suman Gupta for the Railway.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-41011/78/89-DU dated 25-7-1990, has referred the following dispute for adjudication to this Tribunal :—

"Whether the Divisional Railway Manager, Northern Railway Allahabad is justified in terminating the services of S/Shri Baboo Lal S/o Mahipal and Mohan Lal son of Chiddoo w.e.f. 22-2-1985 and 1-8-1985 respectively ? If not, what relief they are entitled to and from what date ?"

2. This reference relates to two workmen, namely, Babbo Lal and Mohan Lal. The case of the concerned workmen is that Baboo Lal was engaged as a gangman under P.W. I Aligarh on 26-3-1976 whereas Mohan Lal was engaged on 13-12-1975. Baboo Lal worked upto 31-7-1985 whereas Mohan Lal worked upto 31-5-1988. In this way both had completed for more than 240 days in a year. Their services were terminated in breach of provisions of section 25-F of I. D. Act.

3. The opposite party has filed reply in which it is alleged that the concerned workmen were engaged as daily rated casual khalasis. They left the job of their own, they have never completed 240 days in any year.

4. In the rejoinder nothing new has been alleged.

5. In support of their case both the concerned workmen have examined themselves. They have supported their claim. They have not been cross examined.

6. There is no evidence in rebuttal, hence I have no hesitation in accepting their evidence.

7. Accordingly it is held that both the workmen had completed 240 days of service and have been removed from service in breach of section 25-F of I. D. Act.

8. Hence, my award is that they are entitled for reinstatement but without back wages.

Dated : 18-12-1997.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 9 जनवरी, 1998

का० आ० 295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, राजकोट के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद-1, के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-98 को प्राप्त हुआ था ।

[संख्या एल-41012/53/95-आई० आर० (बी)]
पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 9th January, 1998

S.O. 295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Triubnal, Ahmedabad-1, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railway, Rajkot and their workman, which was received by the Central Government on the 8-1-1998.

[No. L-41012/53/95-IR (B.)]
P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE SMT. N. J. SHELAT, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CENTRAL, AHMEDABAD.

Reference (ITC) No. 17 of 1997

ADJUDICATION :

BETWEEN :

Western Railway, Rajkot ..First Party.

AND

The Workmen employed under it.

..Second Party.

In the matter of imposing various punishments.

APPEARANCES :

None for the first Party and second Party.

AWARD

By an Order No. L-41012/53/95-I.R. (B), dated 23-6-1997 the Desk Officer, Ministry of Labour, Government of India, New Delhi has referred an industrial dispute as stated in the Schedule of above order between the above parties U/s. 10 (1) of the Industrial Disputes Act, 1947, for adjudication to this Tribunal.

Inspite of services of notice to the above parties, neither they have appeared before this Tribunal nor filed statement of claim or any other documents till this day. In the result, I pass the following order :—

ORDER

The reference is dismissed for non-prosecution and it is disposed of accordingly with no order as to costs.

Ahmedabad, 15th December, 1997.

N. J. SHELAT, Presiding Officer.

नई दिल्ली, 5 जनवरी, 1998

का० आ० 296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जोधपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-1-98 को प्राप्त हुआ था।

[सं० एल० 120124/5/93 आई आर (बी-2)]

के वी बी उण्णी, डैस्क अधिकारी

New Delhi, the 5th January, 1998.

S.O. 296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on the 5-1-1998.

[No. L-12012/54/93-IR (B-II)]

K. V. B. UNNY, Desk Officer.

अनुबन्ध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी : श्री चांदमल तोतला, आर०एस०जे०एस०

औद्योगिक विवाद (केन्द्रीय) सं० : 1/1993

श्री सतपाल अरोड़ा जरिये सचिव, पंजाब नेशनल बैंक एम्पलाइज यूनियन, केन्द्रीय कार्यालय परवाना भवन, माधोबाग, जोधपुर ..प्रार्थी

बनाम

अंचल प्रबन्धक, पंजाब नेशनल बैंक, 1, गोपीनाथ मार्ग, एम०एल०ए० क्वार्टर के पास, जयपुर —अप्रार्थी

उपस्थिति :

(1) प्रार्थी की तरफ से श्री विजय मेहता प्रतिनिधि

(2) अप्रार्थी की तरफ से श्री सुरेशचन्द्र नेगी कार्मिक अधिकारी।

अधिनिर्णय

दिनांक : 27-10-1997

श्रम मंत्रालय, भारत सरकार ने अपनी अधिसूचना संख्या एल-12012/54/93-आई०आर०बी०-II दिनांक 29-7-1993 से पक्षकारों के मध्य उत्पन्न हुआ निम्नलिखित औद्योगिक विवाद इस न्यायालय को नअधिनिर्णय हेतु प्रेषित किया है :—

"Whether, the action of the management of PNB in imposing punishment of stoppage of two increments with cumulative effect on Sri Satpal Arora is justified or not what relief is the workmen entitled to "

आवेदक कर्मचारी ने न्यायालय में अपना आवेदन प्रस्तुत करते हुए बताया है कि विपक्षी नियोजक बैंक ने आवेदक को 17-10-91 को एक आरोप-पत्र दिया जिसमें आरोप लगाया गया कि आवेदक ने 7-10-91 को बैंक हॉल में बैंक के ग्राहक श्री अमृत गुप्ता को दिन के सवा बारह बजे थप्पड़ मारा व अशोभनीय व्यवहार किया। आवेदक ने इस आरोप-पत्र का 5-12-1991 को जवाब दिया जिसमें बताया गया कि यह घटना हुई तब वह कैशियर के पास कैश का कार्य कर रहा था, अमृत गुप्ता को खजांची ने छोटे नोट दिये इस पर अमृत गुप्ता ने बड़े नोट मांगे, इस पर खजांची ने कहा कि बड़े नोट नहीं है तो अमृत गुप्ता ने गाली-गलौच किया, जिस पर आवेदक ने श्री गुप्ता को गाली नहीं देने के लिए तो श्री गुप्ता ने आवेदक को बहुत ही बुरे अपशब्द कहे तथा एक ऐसी गाली दी जिससे आवेदक को गुस्सा आ गया व आवेदक ने न चाहते हुए भी श्री अमृत गुप्ता को एक थप्पड़ मार दिया। आवेदक ने अपनी मांगसूचीनुमा आवेदन में बताया है कि उसने वरिष्ठ प्रबन्धक से क्षमा याचना भी कर ली थी। यह आवेदक एप्पलाईज यूनियन के माध्यम से, प्रस्तुत किया गया है जिसमें बताया गया कि कर्मचारी सतपाल अरोड़ा यूनियन के

पदाधिकारी थे व हैं, यूनियन की तरफ से प्रबन्धतन्त्र से बातचीत करते थे, इससे प्रबन्धतन्त्र इस कर्मचारी से नाराज था व किसी भी तरफ से उसे प्रताड़ित करना चाहता था अतः प्रबन्धतन्त्र ने श्री अरोड़ा की दो वेतन वृद्धियां रोककर प्रताड़ित किया । आवेदन में बताया गया है कि कर्मचारी द्वारा माफी मांग ली गई व बैंक ने उस माफी को स्वीकृत भी कर लिया परन्तु उसके बाद बैंक ने 12-12-91 को कर्मचारी को कारण बताओ नोटिस जारी किया तथा दो वार्षिक वेतन वृद्धियां संचयी प्रभाव से रोकने का प्रस्ताव किया, नियोजक बैंक ने श्री गुप्ता के विरुद्ध कोई कार्यवाही नहीं की जबकि श्री गुप्ता के खिलाफ भी लिखकर दिया था कि अमृत गुप्ता ने उसको गालियां दीं । आवेदन में बताया गया है कि 14-12-1991 को व्यक्तिगत सुनवाई के दौरान कर्मचारी ने अपना पक्ष रखा जिसमें भी बताया कि ग्राहक श्री अमृत गुप्ता द्वारा उकसाने वाली कार्यवाही के कारण यह कार्यवाही हुई जिसके लिए उसने वरिष्ठ प्रबन्धक से माफी मांग ली थी । अतः जो दण्ड दिया गया है वह अत्यधिक है । इसके बावजूद अनुशासनिक अधिकारी ने दण्ड को यथावत् रखा तथा इसकी पुष्टि भी कर दी एवं कर्मचारी द्वारा की गई अपील भी अपीलीय अधिकारी ने अस्वीकार करते हुए दण्ड यथावत् रखा । आवेदन में बताया गया है कि कर्मचारी ने अपने कृत्य के लिए माफी मांगी तथा बैंक ने उसे रिकार्ड पर ले लिया परन्तु फिर भी कठोर दण्ड दे दिया जब कि होना चाहिये था कि बैंक माफीनामा को वापस कर्मचारी को दे देती और स्वीकृत नहीं करती एवं जांच करवाकर आरोप सिद्ध करती परन्तु ऐसा नहीं किया गया तथा बैंक ने ग्राहक श्री अमृत गुप्ता के खिलाफ कोई जांच नहीं की, जो कि बैंक का दायित्व था । प्रार्थना की गई कि दिये गये दण्ड को निरस्त किया जावे ।

विपक्षी बैंक की तरफ से अपने उत्तर में बताया गया है कि बैंकिंग उद्योग की सेवा शर्तें शास्त्री एवार्ड, देसाई एवार्ड, द्विपक्षीय समझौते तथा विभिन्न समझौतों के प्रावधान से लागू होती है तथा कर्मचारियों की अनुशासनहीनता एवं उनके द्वारा किये जाने वाले घोर अचारों हेतु इन पंचाटों/समझौतों एवं द्विपक्षीय समझौते के चैपटर-19 में विभिन्न प्रावधान व प्रक्रिया बताई हुई है तथा कर्मचारी के विरुद्ध कार्यवाही द्विपक्षीय समझौते के चैपटर-19 तथा न्याय के नैसर्गिक सिद्धान्तों के अनुरूप की गई है । उत्तर में बताया गया है कि स्वयं कर्मचारी ने आरोपों को स्वीकार कर लिया अतः विधिनुसार दो वार्षिक वेतन वृद्धियां संचयी प्रभाव से रोकी गई । उत्तर में यह भी बताया गया है कि नियोजक बैंकिंग संस्था है जिसका कारोबार ग्राहकों पर निर्भर है अतः यह दण्ड दिया जाना आवश्यक व न्यायोचित था । तथा यह विवाद औद्योगिक विवाद अधिनियम के अन्तर्गत औद्योगिक विवाद नहीं कहा जा सकता । अधिनियम की अनुसूची के तहत यह विवाद इस न्यायालय को रेफर करना भी उचित नहीं है । उत्तर में यह भी बताया गया है कि यूनियन द्वारा सहायक श्रम आयुक्त के समक्ष विवाद उठाया गया जिसमें भी नैसर्गिक न्याय के सिद्धान्तों के उल्लंघन के सम्बन्ध में शिकायत नहीं की गई तथा सहायक श्रम आयुक्त का हस्तक्षेप मानवीय आधार पर चाहा अतः इस कारण यह मामला इस न्यायालय को प्रेषित किया जाना उचित नहीं है । उत्तर में यह भी बताया गया है कि 7-10-91 को दिन के सवा बारह बजे ग्राहक श्री अमृत गुप्ता को बैंक हाल में कर्मचारी ने थप्पड़ मारा, इस बारे में आरोप-पत्र जारी किया तथा कर्मचारी ने 5-12-91 को दिये गये अपने उत्तर में गलती को स्वीकार कर क्षमा याचना की तथा प्रबन्धक द्वारा दो वार्षिक वेतन वृद्धियां रोकने का दण्ड बैंक ग्राहक के साथ दुर्व्यवहार थप्पड़ मारने के लिए दिया जो दण्ड प्रार्थी ने अपने 5-12-91 के पत्र में स्वीकार किया । उत्तर में यह भी बताया गया है कि कर्मचारी ने 28-10-91 को पत्र दिया था जिसमें उसने आरोपों को अस्वीकार किया अतः विभागीय जांच करवाने का निर्णय लिया गया तथा इसके लिए कार्यवाही होती इसी दौरान 5-12-91 को उत्तर प्रस्तुत कर कर्मचारी ने स्वयं आरोप स्पष्ट रूप से स्वीकार कर लिया, जिस स्वीकृति को ध्यान में रखते हुए द्विपक्षीय समझौते के प्रावधानों के अनुसार विभागीय जांच न करवाकर 12-12-1991 को कारण बताओ नोटिस जारी कर दो वार्षिक वेतन वृद्धियां संचयी प्रभाव रोकने का दण्ड प्रस्तावित किया गया तथा यह भी सूचित किया गया कि यदि कुछ कहना हो तो 14-12-91 को अनुशासनिक अधिकारी के समक्ष उपस्थित होकर लिखित एवं मौखिक रूप से कहे व अपना पक्ष प्रस्तुत करें तथा कर्मचारी ने अपना जवाब 14-12-91 को अनुशासनिक अधिकारी के समक्ष उपस्थित होकर अपनी गलती को स्वीकार किया तथा प्रस्तावित दण्ड को भी स्पष्ट तौर से स्वीकार किया । अतः अनुशासनात्मक अधिकारी ने 19-12-1991 के आदेश से दण्ड की पुष्टि की तथा कर्मचारी द्वारा की गई अपील भी अस्वीकार हुई तथा दण्ड को यथावत् रखा गया । उत्तर में बताया गया है कि कर्मचारी ने कभी भी बैंक को यह नहीं कहा कि अमृत गुप्ता ने उसे गाली दी जिसकी भी जांच करवाई जानी चाहिये तथा वैसे भी कर्मचारी ने अपनी गलती को स्वीकार किया है तथा अपील में दण्ड यथावत् रखा गया क्योंकि दण्ड कम किये जाने का कोई कारण नहीं पाया गया क्योंकि कर्मचारी द्वारा बैंक के ग्राहक को बैंक समय में बैंक परिसर में थप्पड़ मारा गया, जो व्यवहार अशोभनीय होकर वांछनीय नहीं है तथा ऐसा व्यवहार करने वाला कर्मचारी निश्चय ही किसी सहानुभूति का पात्र नहीं हो सकता, जिन सभी पहलुओं पर विचार करके अपील अधिकारी ने अपील अस्वीकार की तथा इस तरह के कृत्य के लिए दिया गया दण्ड कम ही है अतः जो दण्ड दिया गया है वह पूरी तरह न्यायसंगत है । उत्तर में यह भी बताया गया है कि नियोजक बैंक के द्वारा द्विपक्षीय समझौते के अनुसार जांच कार्यवाही की गई, इसके बावजूद यदि न्यायालय इस निष्कर्ष पर पहुंचे कि घटना की सच्चाई सही नहीं है तो बैंक केस को साबित करने के लिए और साक्ष्य प्रस्तुत करने को तैयार है । आवेदन खारिज किये जाने की प्रार्थना की गई ।

आवेदन के समर्थन में कर्मचारी श्री सतपाल अरोड़ा का शपथ-पत्र प्रस्तुत किया गया जिसमे मोटेतौर पर मांग सूची में प्रस्तुत तथ्य बताये गये हैं तथा यह भी बताया गया है कि वार्षिक वेतन वृद्धि रोके जाने का दण्ड ही क्यों पारित किया गया, इसका कोई कारण आदेश में नहीं बताया है तथा अपीलीय अधिकारी ने दोषपूर्ण जांच की तथा अधिकारियों ने अपना माईण्ड भी एप्लाई नहीं किया । यह भी बताया गया कि द्विपक्षीय समझौते के अनुसार जो दण्ड दिया गया है उसमें वार्षिक वेतन वृद्धि रोके जाने का दण्ड सम्मिलित नहीं है ।

विपक्षी की ओर से कार्मिक अधिकारी श्री सुरेशचन्द्र नेगी का शपथ-पत्र प्रस्तुत किया गया जिसमें बताया गया कि उत्तर में बताये गये तथ्य सही हैं ।

दोनों पक्षों के प्रतिनिधियों ने बताया कि गवाहान से प्रतिपरीक्षण की कोई आवश्यकता नहीं रह जाती । दोनों पक्षों द्वारा दस्तावेजात की प्रतिलिपियां प्रस्तुत की गई, जिन दस्तावेजात की सत्यता दोनों पक्षों द्वारा विवादित नहीं की गई । अतः प्रस्तुत तमाम दस्तावेजात स्वीकृत बस्तावेजात हैं ।

उभय-पक्षकारान के प्रतिनिधिगण के तर्क सुने तथा पत्रावली का अवलोकन किया ।

दो द्विपक्षीय समझौते की प्रतिलिपियां प्रस्तुत हुई हैं जिसमें से एक 5-11-1984 का है तथा द्वितीय 14-2-1995 का है । 14-2-1995 में टर्मस आफ सैटलमेन्ट का पैराग्राफ 21 इस मामले से सम्बन्धित है तथा 5-11-1984 के परिपत्र मे 1966 के समझौते के एक्सट्रैक्ट प्रस्तुत किये गये है ।

दिनांक 17-10-1991 को दिये गये आरोप-पत्र में बताया गया है कि कर्मचारी श्री सतपाल अरोड़ा ने दोपहर के सवा बारह बजे बैंक हाल में ग्राहक को थप्पड़ मारकर अशोभनीय व्यवहार किया अतः सात दिन में स्पष्टीकरण की मांग करते हुए बताया गया कि यह कृत्य द्विपक्षीय समझौते के पैरा 5(सी) व (जे) के अन्तर्गत आता है। दिनांक 28-10-91 के कर्मचारी के उत्तर में वर्णित है कि ग्राहक गुप्ता श्री जगदीश कौशियर के पास भुगतान लेने आये थे, तब यह कर्मचारी भी कैश का कार्य कर रहा था गुप्ता ने कैश का भुगतान प्राप्त कर कहा कि बड़े नोट चाहियें तो केशियर ने कहा कि हमारे पास नही है जिसपर ग्राहक बिगड़ गया तथा बैंक के समस्त कर्मचारियों को भद्दी-भद्दी गालियां देने लगा, जिस पर प्रार्थी ने कहा कि गाली मत दो तो ग्राहक और बिगड़ गया तथा बुरी तरह से गाली-गलोच करने लगा तथा ऐसी गालियां दी जिसको कि वह पत्र में नहीं लिख सकता । इसके बाद थोड़ी देर बाद कर्मचारी किसी कार्य से बैंक हाल मे गया तो ग्राहक ने उसे पकड़ लिया और गाली देने लगा, जिसके लिए भी कर्मचारी ने मना किया तो श्री गुप्ता उसे मारने लगा तो बचाव में उसका हाथ पकड़ लिया गया यह घटना सबने देखी व छुड़वाकर समझा-बुझाकर भेज दिया । दिनांक 5-2-1991 का स्वयं कर्मचारी ने अपने उत्तर में बताया है कि ग्राहक द्वारा बड़े नोट मांगने पर कैशियर ने मना किया, तो ग्राहक गालीयां देने लगा जिसके लिए कर्मचारी ने मना किया तो उसे भी बहुत अपशब्द कहे जिसको कि वह पत्र में नहीं लिख सकता तथा ऐसी गाली दी जिससे कि कर्मचारी को गुस्सा आ गया तथा उसने न चाहते हुए भी ग्राहक को थप्पड़ मार दिया जिसके लिए उसने पहले ही वरिष्ठ प्रबंधक के सामने क्षमा याचना कर ली । दिनांक 5-2-1991 के इस पत्र में अंकित है कि "पुनः उपरोक्त विषय में क्षमा याचना करते हुए, आपको विश्वास दिलाता हूं कि भविष्य में कभी ऐसी गलती नहीं होगी, मैं हमेशा से ही बैंक हित में कार्य करता रहा हूं और करूंगा और अन्त में आपसे निवेदन करता हूं कि उपरोक्त आरोप-पत्र पर सहानुभूति पूर्वक विचार करते हुए मेरी सेवाओं को बैंक में नियमित करने की कृपा करें । बैंक ने 2-2-1991 के पत्र से कर्मचारी को सूचित किया कि उसके द्वारा दिनांक 5-12-91 के उत्तर में आरोप को स्वीकार कर लिया है अतः इस संबंध में अब जांच कराने का कोई औचित्य नहीं है तथा द्विपक्षीय समझौते के अनुसार दो वार्षिक वेतन वृद्धियों को रोकना प्रस्तावित करते हुए सूचित किया कि 15-12-91 अनुशासनात्मक अधिकारी मुख्य प्रबंधक के समक्ष उपस्थित होकर लिखित या मौखिक रूप से अपना पक्ष प्रस्तुत करे । इसके उत्तर में भी 14-12-91 के उत्तर में कर्मचारी ने बताया है कि क्योंकि वह अपनी गलती और प्रस्तावित दण्ड स्वीकार कर रहा है अतः इसमें जांच नहीं कराई जावे तथा मानवीय दृष्टिकोण को देखते हुए व परिस्थितियों को ध्यान में रखते हुए कम दंड दिया जावे । अपील के अधिकार को सुरक्षित रखते हुए गलती और प्रस्तावित दण्ड स्वीकार किया । 19-2-1991 के अनुशासनात्मक अधिकारी के आदेश के अनुसार सम्पूर्ण तथ्यों को ध्यान में रखकर प्रस्तावित दण्ड पर पुनर्विचार किया गया तथा पाया गया कि प्रस्तावित दण्ड उचित है तथा संचयी प्रभाव से दो वेतन वृद्धियां रोकने की पुष्टि की गई । दिनांक 1-2-1992 की कर्मचारी की अपील की प्रतिलिपि रिकार्ड पर है, जिसपर 7-4-1992 को आदेश हुआ जिसमें तमाम तथ्यों का वर्णन है तथा अन्त में पाया गया कि दोष सिद्धी उचित है तथा दिये गये दण्ड को कम किये जाने का कोई कारण नहीं है ।

विद्वान प्रतिनिधि प्रार्थी ने तर्क दिया है कि जांच विधिनुसार नहीं हुई क्योंकि यदि प्रार्थी ने आरोप स्वीकार कर लिया है तब भी जांच करवाई जानी चाहिये थी तथा तभी दोष सिद्धी की जानी चाहिये थी व केवल यदि कथित स्वीकृति के कारण ही जांच नहीं कराई गई तो ग्राहक के विरुद्ध भी कार्यवाही होनी चाहिये ।

दोनों पक्षों ने विभागीय जांच की वैधानिकता व दिये गये दण्ड पर एक साथ तर्क प्रस्तुत किये ।

प्रार्थी की ओर से बताया कि विपक्षीय समझौते के किसी भी प्रावधान में इस तरह का कृत्य दुराचरण नहीं है (2) केवल वेतन वृद्धियां रोकने का दण्ड दिये जाने का प्रावधान है अतः संचयी प्रभाव से वेतन वृद्धियां नहीं रोकी जा सकती (3) अपील अधिकारी ने तथा अनुशासनात्मक अधिकारी ने दण्ड दिये जाने के मजबूत कारण नहीं बताये है तथा यह भी प्रकट नहीं किया गया है कि अन्य दण्डों की तुलना में क्यों यह दण्ड ही क्यों दिया जा रहा है ।

प्रतिनिधि विपक्षी ने तर्क दिया है कि जब आरोप लगातार स्वीकार किया जाता रहा तो जांच किये जाने का कोई औचित्य नहीं था । तर्क किया गया कि स्वीकृति के परिणामस्वरूप दोष सिद्धी हुई तथा दण्ड भी प्रस्तावित किया गया तथा कर्मचारी ने अपील के अधीन दण्ड स्वीकार किया है अर्थात् संचयी प्रभाव से वेतन वृद्धियां रोके जाने का दण्ड स्वीकार किया गया अतः इसका कोई महत्व नहीं रह जाता है कि नियम या समझौते में स्पष्टतौर से संचयी प्रभाव नहीं लिखा गया है। विपक्षी की ओर से तर्क दिया गया कि वेतन वृद्धियां रोकने का अर्थ यह है कि संचयी प्रभाव से वेतन वृद्धियां रोकी जाती हैं तथा यदि किसी कारणवंश संचयी प्रभाव से वेतन वृद्धियां नहीं रोकी जावें तो यह अंकित किया जाता है कि यह संचयी प्रभाव से नहीं होगी। अतः वेतन वृद्धियां रोकने का अर्थ ही यही है कि स्थाई रोके जाने का प्रावधान है। यह भी तर्क दिया गया है कि बैंकिंग व्यवसाय की प्रकृति को देखते हुए ग्राहक को बैंक समय में बैंक हॉल में इस तरह थप्पड़ मारने का अत्यन्त ही गम्भीर प्रकृति का दुराचरण है जिससे बैंक को अत्यधिक नुकसान होता है अतः दिया गया दण्ड पूरी तरह से उचित है तथा जांच भी उचित है जिसमें हस्तक्षेप का कोई कारण नहीं है।

प्रार्थी की ओर से दिये गये तर्कों के समर्थन में वेस्टर्न लां कॉलेज 1995 (3) पेज 16 राजस्थान स्टेट रोड ट्रांसपोर्ट कॉरपोरेशन व अन्य बनाम श्रीराम यादव सम्मानीय राजस्थान उच्च न्यायालय एवं 1981 (2) एस. एल. आर.—33 अवे केन्द्र सरकार बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य प्रस्तुत किये जिनका आदरपूर्वक अवलोकन कर प्रस्तुत प्रकरण के तथ्यों के सन्दर्भ में विचार किया गया। माननीय कलकत्ता उच्च न्यायालय की उपरोक्त व्यवस्था में निर्धारित किया गया है कि पश्चिमी बंगाल सर्विसेज (क्लासीफिकेशन कन्ट्रोल एण्ड अपील) नियम 1971 के नियम 8 में W hhholding of increments or Promotion की सजा वर्णित है जिसमें कहीं भी यह अंकित नहीं है कि वेतन वृद्धि संचयी प्रभाव से होगी। अतः संचयी प्रभाव से वेतन वृद्धि रोका जाना दिये गये अधिकारों से परे है । सम्मानीय उच्च न्यायालय की उपरोक्त व्यवस्था में बताया गया है कि अनुशासनात्मक अधिकारी को दण्ड देते समय विभिन्न विकल्पों पर विचार करना होता है तथा कोई विशेष शब्दों ही क्यों लगाई जाती है, इसके लिए भी उचित कारण होने चाहिये। बताया गया है कि चार्ज की प्रकृति, कर्मचारी को सेवा में रखने की आवश्यकता या अन्यथा तथा यदि कम दण्ड दिया जावे तो उसकी उचितता इत्यादी समस्त तथ्यों पर विचार करना होता है। इस मामले में कर्मचारी को सेवा से हटा दिया गया था।

जहां तक कर्मचारी का यह कृत्य दुराचरण की परिभाषा में आता है या नहीं, इस बारे में प्रार्थी ने यह बताया है कि 1966 के द्विपक्षीय समझौते के क्लोज 19(5) में बताया गया है कि बैंक के परिसर में Drunkenness or riotous or disorderly or indecent behaviour जैसा मिसकन्डक्ट की परिभाषा में आता है तथा जिसमें ग्राहक के साथ में किया गया कोई व्यवहार शामिल नहीं होता। परिणामस्वरूप यह घटना भी शामिल नहीं बताई गई है। 1925) (जे) में Doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in Serious loss ग्रोस मिसबिहेविअर बताया गया है जो भी इस मामले में होना प्रमाणित नहीं है इस तर्क के समर्थन में प्रार्थी की ओर से बताया गया है कि 14 फरवरी 1995 के समझौते में उपरोक्त 19(5) में परिवर्तन कर एक और कृत्य ग्रोस मिसबिहेविअर को परिभाषा में लिया गया है Misbehaviour towards customers arising out of bank' business तथा चूंकि यह सन 1995 में ही शामिल किया गया है अतः स्पष्ट है कि ग्राहकों के साथ में कथित कृत्य जबकि यह घटना होना बताया जाता है, दुराचरण की परिभाषा में नहीं आता है। न्यायालय की राय में यह तर्क उचित व मानने योग्य नहीं है क्योंकि 19(5) (सी) में यह लिखा गया है कि रॉयटस अर्थात दंगे की तरह का तथा डिसऑर्डरली व इंडीसेन्ट अशोभन व्यवहार दुराचरण है। किसी भी व्यक्ति के साथ में इस तरह का कृत्य कर दिया जाना 19(5)(सी) में शामिल हो जाता है तथा निश्चित तौर से ग्राहक व बैंक में उपस्थित किसी भी व्यक्ति के साथ दुर्व्यवहार किया जाना दुराचरण हो जाता है। 19(5) (जे) में ऐसा कृत्य जिसमें कि बैंक को नुकसान होने की संभावना हो, दुराचरण है। नुकसान, प्रतिष्ठा, गुडविल, आर्थिक किसी भी रूप में हो सकती है तथा वास्तव में इस बारे में विचार करने की आवश्यकता ही नहीं है तथा यह निष्कर्ष लेने में कोई हिचकिचाहट नहीं हो सकती कि ग्राहक को थप्पड़ मारना बैंक की व्यवस्थय को अत्यन्त गंभीर ठेस पहुंचाना है।

चूंकि प्रार्थी द्वारा अपनी त्रुटि कई जगह स्वीकार की गई अतः जांच का कोई कारण नहीं रह जाता । विभागीय जांच तब होती है जबकि कथित कृत्य आरोप स्वीकार नहीं किया जावे तथा स्वयं प्रार्थी ने लगातार यह माना है कि उसने यह कृत्य किया व आरोप स्वीकार किया है। यहां तक अनुशासनात्मक अधिकारी एवं अपील में भी उसने यह बताया है कि किसी तरह की जांच की आवश्यकता नहीं है अतः आरोप की स्वीकृति को देखते हुए किसी तरह की अन्य जांच की आवश्यकता नहीं रह जाती तथा दोष सिद्धी पूरी तरह से उचित है। जहां तक दोष सिद्धि व दण्ड दिये जाने के आदेश में व अपील में संबंधित अधिकारी द्वारा अपने विवेक का उपयोग नहीं किये जाने का प्रश्न है यह भी मानने योग्य प्रतीत नहीं होता क्योंकि अधिकारियों ने पूरी घटना का विवरण लिखा है, यह भी लिखा है कि कम दण्ड दिये जाने का इस मामले में कोई औचित्य नहीं है । तमाम तथ्यों को विस्तार से वर्णित करना स्पष्ट प्रकट करता है कि तमाम तथ्यों पर विवेक का प्रयोग किया गया । 1995 में किये गये समझौते को भी पूर्ववर्ती तिथियों से प्रभावित किया गया है। अतः प्रार्थी की ओर से सेवा की वैधानिकता इत्यादि के बारे में दिये गये तर्क मान जाने योग्य नहीं हैं।

जहां तक संचयी या असंचयी प्रभाव से वेतन वृद्धियां रोकने का प्रश्न है समझौते का 19(6)(डी) में बताया गया है कि वेतन वृद्धियां रोकी जा सकती हैं तथा (जी) में बताया गया है कि यदि वेतन वृद्धियों के प्रतिकूल प्रभाव पर हो तो नीचे को स्टेज पर अधिकतम दो वर्ष के लिए किया जा सकता है।

प्रार्थी की ओर से जो व्यवस्था प्रस्तुत की गई है वह 1981 की है तथा इसके विपरीत कोई भी नियम विपक्षी की ओर से प्रस्तुत नहीं किया गया है तथा इस व्यवस्था में प्रतिपादित सिद्धांतों को ध्यान में रखना होगा । ग्राहक को बैंक में, बैंक कार्य के दौरान थप्पड़ मार देना मामूली कृत्य नहीं है तथा दोष सिद्ध हो जाने पर संचयी प्रभाव से दो वेतन वृद्धियां रोके जाने का दण्ड भी अत्यधिक नहीं कहा जा सकता तथा दण्ड के लिए अधिक सहानुभूति नहीं हो सकती । उपरोक्त व्यवस्था के अनुसार वेतन वृद्धि संचयी नहीं हो सकती परन्तु इस मामले में यह ध्यान में रखा जाना है कि स्वयं प्रार्थी ने 14-12-91 के अपने पत्र में अपनी गलती व प्रस्तावित दण्ड स्वीकार करते हुए लिखा है कि जांच नहीं कराई जाये व इसकी संभावना से इंकार नहीं किया जा सकता कि जांच कराने या नहीं कराने और प्रस्तावित संचयी प्रभाव से दो वेतन वृद्धियां रोकने के तथ्य को स्वीकार करते हुए शायद अन्य गंभीर शास्ती देने पर विचार नहीं किया गया है। कम से कम प्रार्थी ने उसकी संचयी प्रभाव से वेतन वृद्धियां रोके जाने के तथ्य को स्वीकार किया है। अतः तमाम तथ्यों व विधि के सिद्धांतों तथा कर्मचारी की स्वीकृति को देखते हुए न्यायालय की राय में दिये गये दण्ड में संचयी प्रभाव शब्द हटा दिया जाना चाहिए तथा बिना संचयी प्रभाव से वेतन वृद्धि रोका जाना माना जाना चाहिए। परन्तु साथ ही यह आदेश भी दिया जाना चाहिए कि दिनांक निर्णय तक की अवधि का कोई एरियर प्रार्थी को देय नहीं होगा। ऐसा आदेश दिया जाना इसलिए भी उचित प्रतीत होता है कि स्वयं प्रार्थी ने 14-12-1991 को अपने पत्र से मुख्य प्रबन्ध को लिखा है कि "चूंकि मैं अपनी गलती व प्रस्तावित दण्ड स्वीकार करता हूं इसलिए इसमें जांच नहीं करवाई जावे" तथा प्रस्तावित दण्ड दो वार्षिक वेतन वृद्धियां संचयी प्रभाव से थी।

अधिनिर्णय

अतः यह रेफरेन्स इस तरह अधिनिर्णीत होता है कि दो वेतन वृद्धियां रोका जाना उचित है परन्तु यह संचयी प्रभाव से नहीं होनी चाहिए। अतः वेतन वृद्धियां संचयी प्रभाव से नहीं मानी जायेगी परन्तु इसके परिणामस्वरूप दिनांक निर्णय तक की अवधि का कोई एरियर प्रार्थी को देय नहीं होगा। इस अधिनिर्णय की प्रकाशनार्थ श्रम मंत्रालय भारत सरकार को प्रेषित किया जाये ।

यह अधिनिर्णय आज दिनांक 27-10-1997 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया ।

चांदमल तोतला, न्यायाधीश

नई दिल्ली, 8 जनवरी, 1998

का०आ० 297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था ।

[सं० एल-12012/246/93-आई०आर(बी०-2)]

के०वी०वी उण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on the 7-1-1998.

[No. L-12012/246/93-IR (B-II)]
K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TR BUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR.

Industrial Dispute No. 47 of 1994.

In the matter of dispute :

BETWEEN :

Mahasachive, Allahabad Bank Staff Association C/o. B. P. Saxena 426, W-2, Basant Bihar, Kanpur.

AND

Assistant General Manager, Allahabad Bank, Sansad Marg, New Delhi.

APPEARANCE :

M. K. Verma for the Management and B P. Saxena for the Union.

AWARD

1. Central Government, Ministry of Labour, vide its Notification Number L-12012/246/93-IR (B-2), dated 28-4-1994, has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of the erstwhile United Industrial Bank Limited (since merged with Allahabad Bank) New Delhi in terminating the services of Shri Shiv Kumar Singh Watchman-cum-Peon (since expired on 28-3-1988) w. e. f. 11-1-1988 was justified ? If not, what benefits is his widow entitled to ?"

2. There is no dispute that deceased Shiv Kumar Singh was engaged as Peon-cum-Watchman by the erstwhile United Industrial Bank Ltd., P. P. N. Market Branch, Kanpur on 12-5-1978. Later on he was made a regular employee by order dated 25-5-1978. Subsequently he was transferred to

Patna from where he was transferred to Delhi Branch at Delhi Branch vide order dated 11-1-1988, he was retrenched by payment of retrenchment compensation and notice pay. It may be noted here that this bank was amalgamated with the opposite party Allahabad Bank by order dated 30-10-1989. After this retrenchment Shiv Kumar Singh died on 4-8-1989. Thereafter his widow kept quite for some times. Lateron she approached the Union which has raised the instant industrial dispute.

3. In the claim statement the only ground for assailing retrenchment is that he can not be retrenched without holding enquiry as the reasons for which he was retrenched casts stegma against him.

4. The opposite party has filed written statement alleging that the deceased workman was rightly removed from service, after Paying retrenchment compensation and notice pay. The termination order did not suffer from any infirmity.

5. The Union has filed rejoinder in which nothing new has been alleged.

6. In support of its case, the Union has filed the copy of appointment letter dated 25-5-1978, copy of confirmation letter dated 10-3-1979 and retrenchment letter dated 11-1-1988. Besides the widow of the deceased has examined herself. In rebuttal there is evidence of A. K. Nagar M.W. 1.

7. In this case evidence of parties is hardly material. Only retrenchment letter dated 11-1-88, is relevant. By first part of letter the reasons for retrenchment have been given after giving various section of I. P. C. it has been pointed out that he is involved in a case of misappropriation and murder hence his continuance in service is not in the interest of the bank. As such he is being retrenched side by side retrenchment compensation and notice pay his also been given to him.

8. It has been submitted by the authorised representative of the Union that the deceased workman was a permanent employee. The reasons for his termination amount to casting stigma, hence without holding of enquiry he could not be removed from service as it will be denial of principles of natural justice. If the concerned workman had induldged in misappropriation or money or murder trial proper enquiry ought to have been held before he was removed from service. I agree with the authorised representative of the Union that this termination order has been passed by way of punishment and certainly in this case this termination ought to have been preceded by a departmental enquiry. Such hard steps causing economic death should not have been taken by simply adopting a procedure of section 25-F of I. D. Act. This provisions deals with a case of retrenchment when there is surplus of staff by way of reduction in work or for reasons of like nature. Thus I am of the opinion, that in this case, the removal from service of the concerned workman in the garb of removal is bad in law. As Shiv Kumar Singh has already died question of reinstatement does not arise. It will be enough if the heirs of the deceased are awarded Rs. 5000/- as compensation.

9. I award accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1998

का.आ. 298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. इंडियन आयल कारपोरेशन लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-30012/11/93/आईआर (मिस.)/आईआर (सी-I)]

के.बी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 7-1-1998.

[No L-30012/11/93-IR (Misc)/IR (C-I)]
[No. L-30012/11/93-IR (Misc)/IR (C-I)]

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT VISAKHAPATNAM

PRESENT :

Sri K. Satyanand, B.Sc., LL.M., Chairman and Presiding Officer.

Thursday, the 4th day of December, 1997

I.T. I.D. No. 3/94 (C)

BETWEEN

Chandra Mohan,

D. No. 1—126/3, Srinivasa Nagar, Malkapuram, Visakhapatnam ..Workman

AND

The Chief Technical Manager, M/s. Indian Oil Corporation, Malkapuram, Visakhapatnam ..Management

This industrial disptue referred from Ministry of Labour, Government of India under Order No. L-30012/11/93-IR (Misc)/IR (Coal-I) dated 25-5-94 under Section 10(1)(d) Sub section 2-A of the I. D. Act, to this court for adjudication. Sri B. V. Rao, authorised representative for workman and Sri D V. Subba Rao, Advocate for management, upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

1. This is an industrial disptue referred to this court by the Government of India, framing the point to answer, as follows :

"Whether the action of the management of I.C.C. in dismissing the services of Shri Chandramohan, Ex-

.Asst. (Handling Cash) w.e.f. 26-9-91 is justified ? If not, to what relief the workman is entitled to ?"

2. The facts of the case as set out in the claim statement filed by the workman in question are briefly as follows :

The workman claimed to have joined service of the management on 1-10-92 as typist-cum-clerk. He was promoted to the post of Asstt. On 22-8-86. He remained in that post till 26-9-91 when he was dismissed from service. At the material time he was posted as Cash Asst. handling disbursement of import cash vouchers. While he was discharging his normal duties on 17-12-90, he complained, he was served with suspension order all of a sudden by Senior Terminal Manager. According to him the Senior Terminal Manager was not competent to suspend him as per the Certified Standing Orders. Subsequently the management served a charge sheet dated 24-1-91 with false and baseless allegations including one to the effect that the workman had confessed having committed the alleged acts. The workman claimed to have been implicated in the case of misconduct without warrant. According to him the domestic enquiry was perfunctory. A confession was attributed to him without justification. The whole procedure was contrary to the principles of natural justice. If really he made a confession, the management would not have instituted a domestic enquiry. He also complained that no reasonable opportunity was given to him. The dismissal order passed in such an enquiry, according to the workman, was invalid. His appeal was thrown out summarily he averred. In substance he submitted that his guilt was not at all established. He ultimately submitted that himself and his family were thrown over board without any succour. Thus he claimed reinstatement with back wages and continuity of service.

3. The management filed its statement of demands though called a counter. The case of the management in this regard is one of total denial of the allegations made by the workman assailing the conduct of the enquiry including the dismissal order. It is mainly submitted that the workman backed out unjustifiably from the confession he made earlier. It is submitted that he remitted the entire amount of Rs. 36,500 defalcated by him while admitting his misconduct in his letters. The management also contradicted the workman's allegations against A. K. Rao, Deputy Manager, Finance. Even in his reply he admitted his guilt. Similarly the management claimed that he again admitted his guilt before the enquiry committee. Even in his reply to the notice proposing punishment he gave a representation clearly admitting his guilt and praying for lenient treatment and sympathetic consideration. The management, asserted that the workman was given ample opportunity.

4. Initially both sides addressed arguments on the validity of the domestic enquiry. My learned Predecessor held that the domestic enquiry conducted in this case was not invalid. As such, the matter is taken up for enquiry under Section 11-A of I. D. Act. In consonance with the scope of the enquiry under Section 11-A this court took up the matter for examination of the findings and the proportionality of the punishment. Both sides therefore addressed arguments on these aspects. The points that therefore arise for consideration are :

(1) Whether the findings of the enquiry committee that led to passing of the dismissal order are valid and proper ?

(2) Whether the punishment imposed calls for any interference by this court ? or whether the dismissal order is sustainable

(3) To what relief ?

5. Point No. 1—In this case the management came up with 21 documents. It however, failed to produce the so called documents introduced to be marked as Ex. P-1 to P-5 as per page 2 of proceedings of the enquiry. Similarly, the management also failed to produce the original of letter from Sri B. Chandra Mohan dated 6-12-90 though it showed in the list of 21 documents as it produced the original. Similarly it failed to produce the original of the document NO. 2 in the said list, even while showing in the list that the original is being produced.

6. The management however produced yet another letter dated 16-12-90 written by the workman embodying his admissions in this regard among other things. The said document is listed as item No. 4 in the list pertaining the enquiry proceedings running in 26 sheets. The said letter dated 17-12-90 explained the circumstances that shroud documents 1 and 2 in the said list originality. In other words the letter dated 17-12-90 shown as item NO. 4 in the list referred to above, itself shows that the documents 1 and 2 though xerox copies originated from the workman himself. In fact they bear the signature of the workman underneath the corrections made in the said document, 1 and 2. The importance of the documents 1 and 2 and 4 is immeasurable from the point of view of the management. In the order regarding the validity of domestic enquiry, the point that there was no admission at all on the part of the workman to which effect the Workman made a mention in his statement is conspicuous by its absence. Now the findings of the Enquiry Officer are entirely based upon there confessions made by the workman both in writing as also by conduct. These confessions are spread over almost 5 documents. We have such a confession on the part of the workman even in his two letters dated 6-12-90 shown as documents 1 and 2 in the list of exhibits. In these letters he clearly stated as follows :

"While discharging my duties as Asst. (Cash) since some time. I have misused corporation amount around Rs. 10,000 (Ten thousand only) by changing payment vouchers due to my financial constraints. Now, I got charge of mind and decided not to indulge in such activity and wish to return the amount already utilised for my even purposes. Now I will remitting Rs. 10,000 to Corporation in a couple of days. I request you to kindly apologise me in this regard and consider my case sympathetically."

7. There is yet another piece of evidence embodying the admission of the workman admitting in substance the allegations constituting the charges levelled against him. That is available in document No. 4 of the list. In the said letter he categorically stated as follows :

"Further to my letter dated 17-12-90 I enclose herewith B. Ch. No. 937751/6-12-90 for Rs. 10,000 (Ten thousand only) payable to IOC, Vizag-11. I once again request Sr. DM to kindly consider my case sympathetically and apologise me (?) for my bad practice. I will be making good for the loss sustained by the Corporation after assessing completely."

8. The next important piece showing the admission of the guilt by the workman is found in document No. 6 which is a letter dated 4-2-91 written by the workman though it is a xerox copy. Ultimately we find such admissions on the part of the workman in his statement before the enquiry committee as per page 3 of proceedings of the enquiry submitted as item No. 12 in the list. Over and above the pieces of evidence showing the unequivocal to show that the workman paid as much as Rs. 36,500 towards his effort to make good the loss sustained by the management thanks to his misconduct. This theme of admission on the part of the workman has permitted all through the regard and even his appeal to the higher ups but with a difference. Upto his explanation to the second show cause notice proposing punishment he was quite categorical in admitting his complicity in the misconduct. Thus, that findings of the enquiry committee based upon this long line of admissions on the part of the workman cannot but be up-held as being quite sound. The decision in 1995-II LLN 492 AP clearly endorsed the view that in the face of admission of guilt by the delinquent there was not even a need for making enquiry and the admission of guilt by itself was the sufficient proof.

9. It is, however, urged on the part of the workman tha the dismissal order was passed by an incompetent person But it is not correct. It is further alleged that by the date

of charge sheet the workman had paid off all that he alleged by defalcated and as such the charge was devoid of any content but this argument is untenable as misappropriation though temporary still answers the discription of misconduct. It is further alleged by the learned representative of the workman that in as much as the management ordered enquiry even in the face of an admission before it, it has to be construed that the management was not prepared to accept the plea and when once such a conclusion become irresistable, it is but necessary for the management to run through the entire procedure of the domestic enquiry including aduction of evidence on the part of the management and a corresponding opportunity to the workman. This is a strange preposition and the domestic enquiry, as it appears from record, was held to confirm the admission made by the workman before the issue of charge sheet and the admission made available to the enquiry committee during the course of its process was the one that was ultimately accepted by the enquiry committee. There is nothing irregular in this procedure. He, next, argued that the misconduct was never spelt out. That is not factually correct. The charge sheet itself set out the facts necessary to put the workman on notice. The charge-sheet is marked as document No. 5 and it is self-explanatory in this regard. Viewed from any angle I do not see any infirmity in the findings arrived at by the enquiry committee.

10. Point No. 2.—This point relates to the proportionately and commensurateness and other mitigating circumstances that may have to be taken into consideration in the matter of awarding punishment. This is a cast in which the workman showed sings of repentence from the day one. All his letters upon which the enquiry committee based reliance continued one statement or the other embodying his repentence as also his passionate appeal for mercy actuated by the penury and difficult financial condition prevailing in his family. Along with his admissions before the enquiry committee, he pleaded for latitude and leniency on the ground of the old age of his parents, the dependency of his parents, wife and two children and his sence of atonement as the mitigating circumstances. The management obviously did not take into consideration either these submissions or the submissions he had made earlier in his reply to the second show cause notice marked as document No. 16 wherein he assiduously appealed to the authorities to show mercy. But his appeal turned out to be futile. The management did not show any compassion. Surely this is a case that deserves to be distinguished from other cases of misappropriation where the persons that misappropriate do not make good the less or show signs of repetance and remain adament till the last. In view of these two mitigating circumstances namely his having paid the entire amount found to have been misappropriated by him and his sense of repentence disclosed by various documents constituting material on record besides the adverse circumstances in which his dependents including the old parents are stated to be situated in the wake of his removal from service, I feel that the punishment imposed is quite harsh and is definitely on the high side. It is, therefore, necessary to prune it down bringing it inconsonance with one of the basic tenets of justice which finds expression in the adage that justice should be tempered with mercy.

11. Point No. 3.—Accordingly, the punishment is modified directing the management to reinstate the workman to any post lesser in rank than what he last occupied by the time of dismissal without back wages but with continuity of service There shall be no order as to costs. Reference is answered accordingly.

Dictated to steno transcribed by her given under my hand and seal of the court this the 4th day of December, 1997.

K. SATYANAND, *Presiding Officer*

Appendix of Evidance in I.T. I.D. No. 3/94 (C)

WITNESSES EXAMINED

For Workman :
None.

For Management :
None.

DOCUMENTS MARKED

For Workman :
NIL

For Management :
NIL

नई दिल्ली, 8 जनवरी, 1998

का.आ. 299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै.ओ.एन.जी.सी. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-30012/35/90-आई आर (मिस.)/आईआर (सी-I)]
के.वी.बी. ऊण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relatien to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 7-1-1998.

[No. L-30012/34/90-IR (Misc.)/IR (C-I)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 110 of 1991

In the matter of dispute :

BETWEEN

Om Prakash S/o Ishwari Datt,
C/o R. P. Paul,
18, Karanpur, Dehradun.

AND

Chairman,
O.N.G.C.,
Tel Bhawan,
Dehradun.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its Notification No. L-30012/35/90-IR (Misc) dated 18-7-91 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of ONGC, Dehradun in terminating the services of Shri Om Prakash S/o Shri Ishwar Datt, Labourer w.e.f. February, 1985 is justified ? If not, to what relief is the workman entitled ?

2. It is unnecessary to give the details of the fact as after exchange of pleadings the concerned workman has failed to put in appearance that shows that he is not interested in the case. Hence the reference is answered against the concerned workman for want of proof.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1998

का.आ. 300 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल इंश्योरेंस कं. लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-17012/45/93/आई आर (बी-II)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 300.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of National Insurance Co. Ltd. and their workman, which was received by the Central Government on 7-1-1998.

[No. L-17012/45/93-IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 14 of 1994

In the matter of dispute :

BETWEEN

Secretary,
General Insurance Development,
Officers Association,
118/327, Kaushalpuri,
Kanpur.

AND

Manager,
National Insurance Company,
4th Floor, 118/327, Kaushalpuri,
Kanpur.

APPEARANCE :

Shri B. P. Saxena—for the workman.

Shri Amreek Singh—for the Management.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its Notification No. L-17012/45/93-I.R. (B-II) dated 10-2-94 has referred the following dispute for adjudication to this Tribunal :

> Whether the action of the management of National Insurance Co. Ltd., in terminatig the services of Shri R. R. Sharma, Trainee Marketing Agent w.e.f. 1st July 1992 is just and legal ? If not, to what relief is the workman entitled to ?

2. The case of the concerned workman R. R. Sharma is that he was engaged as a marketing Agent by the opposite party National Insurance Co. Ltd. at Transport Nagar Branch Kanpur on 4-7-88. He was paid Rs. 400 as stipend. This appointment was for a period of two years. It was further extended for two years. However his stipend was reduced to Rs. 200 P.M. The services of the concerned workman were discontinued after 30-6-92 by stopping payment of wages. This termination is bad in breach of provision of Section 25-F I. D. Act.

3. The opposite party has filed reply in which it is alleged that concerned workman is not an employee of the opposite party instead he was appointed as Trainee Agent who was get remuneration by way of commission on the policy money. He was paid only stipend. Further his term came to an end by expiry of period probation.

4. In the rejoinder nothing new has been alleged.

5. The first point which needs consideration is as to whether the concerned workman an employee of the opposite party. The Au. Rep. of the opposite party was enquired about the provision under which the Trainee Agents are appointed. He took repeated opportunities from the Tribunal but fail to do so. It means there are no Rules and regulations for appointment of trainee agents. In its absence the case is to be decided keeping in view the terms of engagement. I think the case of Trainee Agent is similar to that of a Pigmy Agent who are engaged by various Banks who collect money for Bank from customers on commission basis and deposit the same in the bank after collection. The Trainee Agent of the opposite party also obtain policies [illegible]s. In the case of Management Indian [illegible] Officer Industrial Tribunal and others (Madras) L.L.R. 164 it has been held that the Pigmy Agent are the workman as envisaged by Section 2(s) I. D. Act. For the same reasons I think the concerned workman should also be taken as employee of the opposite party.

6. The concerned workman R. R Sharma WW-1 has stated that when he was removed from service notice pay and retrenchment compensation was not given to him. There is no evidence in rebuttal. Hence it is held that there has been breach of Provision of Section 25-F I. D. Act when the concerned workman was removed from service.

7. Accordingly my award is that termination of the concerned workman is bad in law and he is entitled for reinstatement for the same post which he was holding at the time of termination and will also be entitled for back wages at the rate which he was drawing at the last time.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1998

का.आ. 301—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-12012/312/94-आई.आर.(बी.-II)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 301.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 7-1-1998.

[No. L-12012/312/94-IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 37 of 1995

In the matter of Industrial dispute :

BETWEEN

Sri Raju Porwal C/o S. L. Porwal
160/4 Lal Colony Kanpur.

AND

Deputy General Manager
Syndicate Bank
43/28 Nawal Kishore Road
Skylark III Floor
Lucknow.

APPEARANCE :

Raju Porwal—for the workman and

V. P. Srivastava—for the Management of Syndicate Bank.

AWARD

1. Central Government, Ministry of Labour, vide its Notification No. L-12012/312/94-I.R. (B-II) dated 15-3-95, has referred the following dispute for adjudication to this Tribunal :

Whether Sri Raju Porwal who was employed by the management of Syndicate Bank, Lucknow as Pigmy Agent/Pigmy Deposit Collector was a workman within the meaning of Section 2(s) of the I. D. Act ? If so, whether the action of the Bank management in terminating his services w.e.f. 22-10-93 was legal and justified ? If not, what relief is Sri Porwal entitled to ?

2. It is the admitted case of the parties that the concerned workman was appointed as Agent for collection of Pigmy Depoits by the opposite party Syndicate Bank at Sharda Nagar branch Kanpur vide letter dated 17/19-12-1988. He was to get 3 per cent Commission by way of remuneration. He continued to work upto 22-10-93. He was disengaged by order dated 22-10-93.

3. The case of the concerned workman is that by the nature of work he was performing and manner in which the work was being taken from him, he is a workman as envisaged by Section 2(s) of Industrial Disputes Act. He worked upto 24-5-93. Thereafter he fell ill and submitted leave applications alongwith medical certificate. When he went to join he was informed that he has been removed from service by order dated 22-10-93. This termination order has been challenged on the ground that there has been breach of provisions of Section 25-F of I. D. Act. There has further been breach of provisions of Section 25-G of Industrial Disputes Act. Apart from this removal from service is being penal in nature and as such he could not be removed from service without holding any enquiry.

4. The opposite party bank has filed reply in which it has been alleged that the concerned workman was engaged purely as Agent and as such he does not fall in the category of the workman as defined by Section 2(s) of I. D. Act. It is further alleged that he has been negligent in performing of the duties and had been making defaults in making deposit of money. He also remained absent hence he was rightly disengaged. By way of amendment it has been alleged that the concerned workman has got himself enrolled as Advocate and as such is gainfully employed.

5. In the rejoinder and additional rejoinder nothing new has been alleged.

6. In support of his case, the workman filed Exts. W-1 to W-11. Beside he has examined himself as Raju Porwal as W.W. 1. In rebuttal the management have filed Exts. M-1 to M-9 besides Asstt. Personnel Manage, Dilip Kumar has been examined.

7. It is the admitted case of the parties and are also stand verified from Ext. W-1 appointment letter dated 17/19-12-88 that the concerned workman was engaged as agent for collection of Pigmy Deposit for the opposite party and for which he gets three per cent commission by way of remuneration. This fact has also been stated by the both witnesses of the parties which need not be given in details.

8. In this context first point which requires determination is as to whether the concerned workman should be held to be a workman as envisaged by section 2(s) of I.D. Act. In support of his claim the concerned workman has referred to the case of Management of Indian Bank versus Presiding Officer, Industrial Tribunal and others (Mad) LLR 164. In this case an agent of the nature of the concerned workman has been held to be a workman under section 2(s) of Industrial Disputes Act. This authorised representative of the opposite party bank has submitted that the operation of this judgment has been stayed by the Hon'ble Supreme Court, hence it should not be followed. Further he has referred to the case of management M/s. Puri Arun Cooperative Bank versus Madhusoodan Sahu 1992(65) FLR 805 in which an appraiser of a property was held to be not a workman. This ruling will have no application to the present case as valuers are involved professonals independtly. Parties who approach them get the charcterof a client/customers. It is not so in the case of Pigmy Agents. Besides the authorised representaive of the opposite party bank has referred to a number of decision of various CGITs to show that such an agent has not been held to be a workman. These awards should serve as a precedence before me. He has also referred to a judgment of Syndicate Bank versus Syndicate Bank Commission Staff Union given in writ petition No. 1543 of 87 the date of decision of which is not discernable. It appears that Pigmy Agents who were appointed by the bank as has been done in the instant case they were to get remuneration by way of commission. Certain Pigmy agents had withdrawn commission in respect of higher amount than on which they were entitled to get. In order to clarify the matter—a circular dated 10-12-79 was issued by the bank and on the basis of this circular excess amount was sought to be realised from these commission agents. In turn these commission agents filed a writ petition which was heard and allowed by a Learned Single Judge. The bank preferred later patent appeal which has been decided. In this case, I have gone through the judgment of Hon'ble High Court. Hon'ble High Court at one place had noticed the contention of counsel of the bank that relationship between bank and Agent is purely contractual and is not governed by any statutory provision. This matter could not be investigated in writ petition. The Division Bench agreed that question of such relationship could not be entertained in the writ petition and on this ground the writ petition was allowed. Thus it will be seen that question involves in the present reference viz. whether Pigmy Agent is an employee of the bank was not the subject matter of issue at all. Hon'ble High Court had not given any opinion in this regard as well. Hence this authority will not help the management bank in any manner. Thus it will be seen that the case of the concerned workman is supported by Ruling of Madras High Court. Even if its operation had been stayed by Hon'ble Supreme Court, I am inclined to follow it for the reasons given therein. Hence on this basis alone I come to the conclusion that the concerned workman is a employee of the bank opposite party.

9. As has been pointed out it is not disputed that the concerned workman has been disengaged w.e.f. 22-10-93. It amounts to retrenchment. Admittedly no retrenchment compensation and notice pay has been given to him. In this way there has been breach of provisions of section 25F of I.D. Act. Further from the termination order Ext. M-7 dated 22-10-93, it will be deemed that disengagement of the concerned workman has been done because of certain negligent act which amounts to misconduct. Hence, he could not be removed from service without holding any enquiry. Thus on both count disengagement of the concerned workman is bad in law.

10. There is no cogent evidence that there had been breach of provisions of section 25G of I.D. Act.

11. As a result of above discussion, my award is that the concerned workman is an employee of the opposite party. He has been illegally removed from service, hence he will be entitled for reinstatement with back wages. The back wages will be calculated by calculating average of one year remuneration which the concerned workman had received in one year preceding the date of termination from service.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 8 जनवरी, 1998

का.आ. 302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबन्धतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-12012/381/92-आई.आर.(बी.)-II]

के.वी.बी. उन्नी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 302.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 7-1-98.

[No. L-12012/381/92-IR (B-II)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT PANDU NAGAR, KANPUR

IN THE MATTER OF DISPUTE BETWEEN :

General Secretary
Bank of Baroda Staff Association
115|222-A Madhav Bhavan Civil Lines
Kanpur.

AND

Regional Manager
Bank of Baroda
118|330 Kaushalpuri
Gumti No. 5 Kanpur.

APPEARANCE :

V. K. Gupta for the Management and B. P. Saxena for the Union.

AWARD :

1. Central Government, Ministry of Labour, New Delhi vide notification no. L-12012/381/92-IR (B-II) dated 12-3-1993 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Bank of Baroda, Kanpur, in denying the payment of overtime for the extra hours work performed by Sri Vishnu Das, part time Sweeper since July, 1988 and not regularising the services in whole time employment is justified ? If not what relief the workman is entitled to ?

2. The case of the concerned workman Vishnu Dass is that he is working as part time sweeper from July 1988 at Etawah Branch of the opposite party Bank of Baroda and is being paid half of the full wages. In the mean time the work of peon is also being taken from him for which he has to work for more than 7-1|2 hours per day. As he supposed to work part time and as he has been asked to perform duty for whole time he is entitled for over time. Further as he has been regularly performing duty of peon he is entitled for regularisation as well.

3. The opposite party has filed reply in which it has been admitted that the concerned workman was working as part time sweeper. Whenever, there was need for extra work of peon the services of the concerned workman were utilised as casual labour for which wages were paid per day. Hence question of payment of over time does not arise, as he has not worked continuously at the post of peon, question of regularisation does not arise.

4. In the rejoinder nothing new has been alleged

5 .In support of his case, Vishnu Das W.W. 1 has examined himself. Beside he has filed Ext. W-1 to show that he had worked for 217 days from July 1988 to 1989. Ext. W-20 is the rule for recruitment of peon.

6. In rebuttal there is evidence of Raghuraj Singh Senior Branch Manager.

7. The first claim of the concerned workman regarding over time is not tenable on the basis of his own pleading. He had admitted that he was a part time sweeper while of and on work of peon was taken whenever necessity arose and for which payment was made to him on daily basis. The claim of over time would be tenable if an employee is asked to perform the duty beyond the duty hours for which he was engaged. In other words if work of sweeper is being taken from the concerned workman and if such work is taken for whole day certainly he will be entitled for over time. However, when he is required to perform some other duty specially for which extra wages are being paid, the question of over time would not arise at all. The concerned workman in his cross examination has admitted that when ever duty of peon was taken he was paid Rs. 20|- per day. When wages for extra work already been given to the concerned workman question of payment of overtime would not arise. Hence, this claim of over time is not tenable.

8. As regards the claim of regularisation the same would be tenable only when he is required to perform duty continuously on a certain post under the orders of the competent auothrity. From Ext. W-1 the certificate relating to numer of days it will be evident

that he had not continuously worked on certain post hence he is not entitled for regularisation as well.

9. In view of above discussion my award is that concerned wormkan is neither entitled for over time nor for regularisation hence, both the parts of reference are answered against the concerned workman. Consequently the concerned workman will not be entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 8 जनवरी, 1998

का.आ. 303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक आफ इण्डिया के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-12012/306/95-आईआर.बी.-II]
के.वी.बी. ऊण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 303.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 7-1-98.

[No. L-12012/306/95 IR(B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT DEOKI PALACE ROAD PANDU NAGAR KANPUR

Industrial Dispute No. 102 of 1996

In the matter of Dispute :

BETWEEN :

Ravi Shanker Shukla.
Secretary,
Central Bank Staff Association,
C/o. B. P. Saxena,
425-W-2 Basant Bihar.
Kanpur.

AND

Regional Manager,
Central Bank of India.
R.O., 372/18-B.
Gwallor Road Jhansi.

AWARD

1. Central Government Ministry of Labour Delhi vide its Notification No. L-12012/306/95-IR(B-2) dated 16-10-96 has referred the following dispute for adjudication to this Tribunal :—

Whether Shri Anil Kumar Pathak is the employer of the Central Bank of India ? If so, whether he is entitled for a regular appointment in the bank and from what date ? If not, to what relief the workman is entitled ?

2. It is unnecessary to give the details of the case as on 17-10-97 Au. Rep. of the workman Shri B. P. Saxena has stated that he has no instructions. Hence the reference is answered against the concerned workman for want of proof.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1998

का.आ. 304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[स.एल.-12012/50/92-आई आर.बी.-II]
के.वी.बी. ऊण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 304.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 7-1-98.

[No. L-12012/50/92 IR (B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT DEOKI PALACE ROAD PANDU NAGAR KANPUR

Industrial Dispute No. 82 of 1992

In the matter of dispute :

BETWEEN :

General Secretary,
Allahabad Bank Staff Association,
C/o. S. P. Saxena 127/491-W-1 Saket Nagar,
Kanpur.

AND

Regional Manager,
Allahabad Bank,
Regional Office,
Pandu Nagar Kanpur.

APPEARANCE :

M. K. Verma—for the Bank Management and B. P. Saxena—for the Union/workman.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide Notification No. L-12012/50/92/IR-B.II dated 24-6-92, has referred the following dispute, for adjudication to this Tribunal :—

Whether the action of the management of Allahabad Bank in relation of Sh. Kailash Chandra Mehrotra, Spl. Asstt. of imposing a fine of Rs. 8000 is justified ? If not, to what relief is the workman entitled ?

2. The concerned workman K. C. Mehrotra is that admittedly he was working as special assistant at Raipurwa Branch of Kanpur of the opposite party Allahabad Bank. In this branch there was saving bank account No. 2597 of one Vinay Kumar. Concerned workman was issued a chargesheet 31-1-90, according to which he was alleged to have been negligent of passing and of withdrawal form of Rs. 90000/- in respect of the above mentioned saving bank

account. The concerned workman submitted his reply to chargesheet on 9-4-90, 2-5-90 and 4-8-90 by which he had admitted his guilt. As guilt was admitted disciplinary authority did not proceed to held further enquiry. Instead a show cause notice dated 17-12-90 was given to him. The concerned workman submitted his reply alleging that he was given assurance that in case he admits his guilt he would be let of by issuance of warning or censure by way of punishment. The disciplinary authority has passed an order imposing a fine of Rs. 8000/- by way of punishment. Feeling aggrieved the concerned workman has raised the instant industrial dispute.

3. In the claim statement it was once again alleged that admission was obtained on the basis of assurance, hence punishment ought not to have been more than censure or warning. Further in any case as this admission was obtained under certain assurance punishment could not have been imposed on the basis of such assurance. During the course of arguments it was also submitted that punishmnt by way of fine could not have been imposed as it is contrary to the provisions of Bipartite Settlement.

4. In the written statement it was denied that admission was obtained by giving some assurance. Instead the concerned workman had choosen to admit the guilt in order to avoid regour of domestic enquiry.

5. In the rejoinder, nothing new has been alleged.

6. In the first place it is to be seen if any assurance was given to the concerned workman that he would be visited with a lenient punishment in case he admits his guilt. There is Ext. W-3 a letter dated 2-5-90 written by the concerned workman in which reference has been made to previous letter dated 9-4-90 and has submitted that in case the management feels that the concerned workman was guilty to have committed some misconduct, he admits the same and due justice should be done to him. In the letter dated 4-8-90 he once again stated that he admits the charge without any pressure. The concerned workman in his evidence has stated that this admission was obtained by giving assurance that he will be issued a warning by way of punishment This fact has been denied by the Asstt. General Manager R. B. Dutta M.W.1. The authorised representative for tht bank management has explained that as oral admission of the concerned workman was not a clear cut he was again given an opportunity to furnish unqualified admission. No assurance was given. It is to be borne out in mind that alleged misconduct of the concerned workman was quite grave one. If allegations were correct the concerned workman would have been certainly liable for major punishment, like removal from service. It is quite likely that having seen the previous record of the concerned workman, the management would have been on the mercy petition of the concerned workman given that such extreme punishment would not be awarded and he would be let of with other punishment short of dismissal.

7. Hence, I come to the conclusion that the management had not given any such clear cut assurance to the concerned workman that he would be let of with censure of warning, as it is no punishment to the alleged guilt. Instead it is quite understandable that such concession would have been given for inflicting such punishment which would have been less than dismissal or removal from service. Hence, if the management has choosen to impose a fine of Rs. 8000/- instead of dismissal from service I think the concerned workman should not have any grievance The management had taken correct view of the matter as far as punishment is concerned It cannot be said that such assurance was obtained illegally. Rather management has had stick to their words. As such punishment cannot be disturbed on this score.

8. Secondly I am of the view that this Tribunal can be interfered only when the punishment is less than dismissal from service or removal from service. In case it is less than that this Tribunal under section 11-A of I.D. Act has no power to interfere with it.

9. The authorised representative of the concerned workman had submitted that fine could not have been imposed as it is contrary to first Bipartite Settlement. I do not agree with this contention. The authorised representative of the management have drawn my attention to the provisions of para 19.6(e) of Bipartite Settlement which show that the management can also imposed a fine.

10. Lastly the authorised representative of the concerned workman carried me through the enquiry of Ram Autar Armed Guard and it is submitted that as he has already been punished the concerned workman has wrongly been punished for the same. I have gone through the chargesheet of Ram Autar and find that he was been charged for forging the signatures of Vinai Kumar on the withdrawal form whereas the concerned workman has been charged for being negligent in passing withdrawal. Thus the misconduct of Ram Autar is quite distant from that of concerned workman.

11. Hence the result of enquiry in respect of Ram Autar will have no bearing in the present case.

12. In the end my award is that the management was within its right in imposing a fine of Rs. 8000/- against the concerned workman and consequently he is not entitled for any relief.

12. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 8 जनवरी, 1998

का.आ. 305—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-98 को प्राप्त हुआ था।

[सं. एल-12012/50/92-आई.आर.(बी-II)]
के. वी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 8th January, 1998

S.O. 305.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 7-1-98.

[No. L-12012/50/92-IR(B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU, NAGAR, KANPUR

Industrial Dispute No. 94 of 1992

Under Section 33-A of I.D. Act arising out of Reference

No. L-12012/50/92-I.R. B-II dated 24-6-92.

In the matter of dispute :

BETWEEN

P. N. Singh.
General Secretary,
Allah bad Bank Staff Association,
C/o S. P. Saxena, 127/491, W-1, Saket Nagar,
Kanpur.

AND

Regional Manager,
Allahabad Bank,
Regional Office,
Pandu Nagar, Kanpur.

APPEARANCE :

B. P. Saxena for the workman and M. K. Verma, LLR for the Management.

AWARD

1. This is an application under Section 33-A of I.D. Act by K. C. Mehrotra against Allahabad Bank. It appears that the concerned workman had raised an industrial dispute No. 82 of 92 challenging the order of the opposite party for realisation of Rs. 8000 as fine for misconduct, after issuing show cause notice dated 12-12-90. Ultimately by order dated 22-2-91 it was ordered that Rs. 8000 should be recovered from the concerned workman. Hence it is complained that by realising Rs. 8000 during the pendency of industrial dispute the opposite party has changed the service condition. Section 33 lays down the condition of service which are to remain unchanged during the pendency of industrial dispute. I have gone through it It deals with only removal from service or otherwise Further I am of the opinion that realisation of money which was imposed by way of punishment does not amount to change in service condition. Hence, the application is rejected and the workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 जनवरी, 1998

का. आ. 306.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एवं सिन्ध बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-1-98 को प्राप्त हुआ था।

[स. एल. 81301 2/236/93/आई.आर.बी.II]

के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 9th January, 1998

S.O. 306.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 8-1-98.

[No. L-12012/286/93-IR(B-II)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

Reference No. 21 of 1994

PARTIES :

Employers in relation to the management of Punjab and Sind Bank, Patna and their workmen.

APPEARANCES :

On behalf of the workmen : Shri Arun Kumar Chaudhary, the concerned workman.

On behalf of the employers : Shri Pritam Singh, Advocate.

STATE : Bihar. INDUSTRY : Banking.

Dhanbad, the 31st December, 1997

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12012(286)/93 dated 17-2-94 :

SCHEDULE

"Whether the action of the management of Punjab and Sind Bank, Patna in terminating the services of Shri Arun Kumar Chaudhary, Ex-Peon from 1993 is justified ? If not, what relief, is the workman entitled to ?"

2. In this reference both the parties appeared and filed their respective W.S. and documents. Thereafter the case proceeded along its course. Subsequently, when the case was fixed a Joint Petition of compromise was filed under the signature of both the parties. I have gone through the Joint Compromise petition and do find that the terms contained therein are fair and profer. Accordingly, I accept the said Joint Compromise petition and pass an Award in terms thereof which forms part of the Award at Appendix.

B. B. CHATTERJEE, Presiding Officer

APPENDIX

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 21 of 1994

In the matter of :—

Government of India, Ministry of Labour, Order No. L-12012/286/93-IR B-II dated 17-2-1994.

AND

In the matter of :
The Branch Manager,
Punjab and Sind Bank, Haziganj,
Patna City. ..EMPLOYER.

Vs.

Arun Kumar Choudhary,
S/o Late Godhan Prasad Choudhary,
Kila Road, Jhauganj, Patna City. ....EMPLOYEE.

The humble joint petition on behalf of both the parties above named ;

Most Respectfully Sheweth :—

(1) That the above matter is pending before this Hon'ble Tribunal.

(2) That the above matter has been settled by and between the parties on the following terms and conditions :—

(a) That Shri Arun Kumar Choudhary will be absorbed as Peon with effect from 12-12-1996.

(b) That Shri Arun Kumar Choudhary shall not have any claim monetary or otherwise till the date of Observation from 12-12-1996. Nor shall be order any claim for any amount or otherwise before any court of law or authority either for an amount or otherwise arising out of present order of reference.

(c) Consequent upon the settlement arrived at all the disputes and demands against the Bank of Shri Arun Kumar Choudhury stands settled fully and final. and the issue under Reference stands resolved completely.

(3) The application is made bona fide.

It is, therefore, humbly prayed that this Hon'ble Tribunal would be pleased to accept the above terms of settlement as enumerated in Paragraph-2 of this application and pass an Award in terms thereof and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper.

And for this act of kindness your Petitioners as in duty bound shall ever pray.

Arun Kumar Choudhary, (The Workman). Jaspal Singh Gill, (For the Bank).

1. Verification

I, Jaspal Singh Gill S/o Late Sardar Dayal Singh, Branch Manager, Punjab and Sind Bank, Hajiganj, P.S. Chowk, Patna City, do hereby solemnly affirm and declare that the contents of this Joint Petition of compromise have been read and understood by me and the same are correct to the best of my knowledge.

Signed and verified by me on this the 20th day of November, 1996 at Civil Court, Patna.

Sd./- Jaspal Singh Gill

2. Verification

I, Arun Kumar Choudhury S/o Late Godhan Pd. Choudhury Kila Road, P. S. Chowk, Patna City-800008 do hereby solemnly affirm and declare that the contents of this Joint Compromise petition have been read and explained to me in Hindi and the same are true and correct to the best of my knowledge.

Signed and verified by me on this the 20th day of November, 1996 at Civil Court, Patna.

Sd./- Arun Kumar Choudhury

AFFIDAVIT

I Jaspal Singh Gill S/o. Late Sardar Daval Singh Gill, Branch Manager, Punjab and Sind Bank, Hajiganj, P. S. Chowk, P.O. Thajuganj, Patna City-800008 do hereby do hereby obtainly affairs and declare as follows :—

(1) That I am a Party in Ref. No. 21/94 Branch Manager and I am well acquainted with the facts and circumstances of the case.

(2) That the contents of this joint compromise petition filed in reference No. 21/94 are true to the best of my knowledge.

(3) That the contents of this affidavit are true and correct to the best of my knowledge.

JASPAL SINGH GILL,
DEPONENT.

AFFIDAVIT

I. Arun Kumar Chowdhury S/o. Late Godhan Prasad Choudhary, Kila Road, P. S. Chowk, Patnacity-800008 do hereby solemnly affirm and declare as follows :—

(1) That I am a Party in Ref. No. 21/94, Punjab and Sind Bank, Hajiganj, Patna City Vs. Arun Kumar Choudhry and I am well acquainted with the facts and circumstances of the case.

(2) That the contents of this joint compromise petition filed in reference No. 21/94 are true to the best of my knowledge.

(3) That the contents of this affidavit are true and correct to the best of my knowledge.

ARUN KUMAR CHOUDHURY,
DEPONENT.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 307—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना, अश्वपुरम के प्रबन्धतन्त्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था ।

[स. एल-42011/16/95-आई आर (डी.यू.)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 307.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Aswapuram and their workman, was received by the Central Government on 16-1-98.

[No. L-42011/16/95-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I
Dated, 16th day of December, 1997

Industrial Dispute No. 106 of 1996

BETWEEN :

The General Secretary, Contract Labour and Daily Wages Workers Union (TN.TUC) Aswapuram (Manugur) Dist. Khammam. .. Petitioner.

AND

The General Manager, Heavy Water Project, Aswapuram (Manugur) Dist. Kammam (A.P.)
.. Respondent.

APPEARANCES :

Sri G. Ravi Mohan, advocate—for the petitioner.

Sri P. Damodar Reddy, advocate—for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/16/95-IR(DU) dt. 26-7-1995, referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :—

"Whether the action of the management of Heavy Water Project in terminating the services of Shri V. Shankar is legal and justified. If not, to what relief the workman is entitled to ?"

Both parties appeared and filed their pleadings.

2. The workman concerned in this dispute, hereinafter called as petitioner filed a claims statement contending as follows :—

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500/- per month orally while performing his duties to the satisfaction of his superiors, there was a settlement under section 12(3) of the I. D. Act between the management and the Heavy Water Plant contract workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a writ petition No. 14500/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No. 55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent management to reinstate the workman who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dt. 8-7-86 and sec. 25F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

3. The respondent filed a counter contending as follows :—

The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not an industry as it is sovereign function and so the I.D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500/- per month is not correct. The petitioner was appointed only on 1-4-1985. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram, number of unskilled, semiskilled/skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of Sec. 25-F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant contract workers and employers Union. (Manuguru) filed a Writ petition before the Hon'ble High Court while the writ petition was pending, the matter was referred to this Tribunal for adjudication. This Tribunal passed an Award in I. D. No. 55/88 on 3-12-1990, with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to atleast one member of the family of the land losers due to acquisition of land. They are still to be accommodated. The petitioner also filed an I.D. No. 80/96 in the Industrial Tribunal-cum-Labour Court at Warangal. He cannot raise this dispute. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW1. He did not file any document. The Industrial Relation Officer, Two Tradesmen, U. D. Clerk, and Senior Accounts Clerk are examined as M.Ws. 1 to 5 respectively. They filed Exs. M1 to M22.

5. The points for consideration are :

(1) Whether the respondent is justified in terminating the services of the petitioner ?

(2) If not, what relief, the workman is entitled to ?

(6) POINT 1.—The admitted facts of the case are as follows.—The Department of Atomic Energy, Government of India intended to start heavy water project, used for Atomic Energy purpose, in Aswapuram in Khammam district. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for construction purpose, for leveling water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M4 list. This Tribunal passed Ex. M5 dated 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The Government of India passed Ex. M6 order giving temporary status for the remaining 5 persons. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central), Vijayawada on 11-11-1994 as evidenced by Ex. M10 failure report dated 27-2-1995. This reference was made on 26-7-95 but received in this Tribunal on 12-8-1996. Meanwhile the petitioner raised dispute I.D. No. 80/96 in the Industrial Tribunal at Warangal u/s. 2-A(2) of I.D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to his Tribunal the petitioner withdrew the said I.D. No. 80/96 on the file of Industrial Tribunal at Warangal.

(7) There was some agreement u/s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Section 25F of the I.D. Act. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief. Though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

(9) The respondent filed Ex. M1 statement showing the attendance particulars of each workman that worked upto 30-9-86 said to have been prepared by MW4 a U.D. Clerk, at the instance of Mr. Stefen Balasundaram the then Administrative Officer. It was found but that the paid holidays and Sundays were not included in the number of days each workman worked therein, on comparing the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into Court. So the respondent prepared Ex. M22 another statement showing the particulars of attendance of each casual labour from November, 1983 to September 1986 including the working days and paid holidays. The respondent though exhibited some of the Muster Rolls, produced almost all the muster rolls from November, 1983 when the respondent started to engage casual labour in September, 1986. Some muster rolls showed that some of the workmen worked in October 1986 also. The Muster rolls for April, 1984 and December, 1984 and August and September 1986 were not produced. There is vast difference between Ex. M1 statement prepared by MW4 in 1986 or 1988 and Ex. M22 statement prepared by MW5 during the pendency of this dispute. So this Tribunal verified all the muster rolls which are marked and unmarked. They were made available for perusal of the counsel for the petitioner. The details of the

number of days worked by the petitioner as per Ex. M1 and Ex. M22 and verification by this Tribunal are as follows :

11/83 12/83 1/84 2/84 3/84 4/84 5/84 6/84 7/84 8/84 9/84 10/84 11/84 12/84 1/85 2/85 3/85 4/85 5/85 6/85 7/85 8/85 9/85 10/85 11/85 12/85 1/86 2/86 3/86 4/86 5/86 6/86 7/86 7/86 8/86 9/86. Total

As per statement Ex.M1 prepared by MW4 — 17 23 23 22 23 24 7 — — — — — — 19 8 16 21 22 225

As per statement Ex.M22 prepared by MW5 — 29 26 30 — 24 23 — 18 26 26 25 26 27 7 — 20 — — 26 ——333

On verification by this tribunal as per available muster rolls : The above particulars are tallied with. December, 1984 muster roll is not filed, but he worked in November, 1984 and January, 1995. So the number of 31 days for December, 1985 is taken into account. He worked for 21 days in April, 1986. It can be seen from the above statement, available muster rolls and the statements filed by the management witnesses that the petitioner worked 333 days as per Ex. M22 statement prepared by MW5 with MW4. As per the available muster roll the petitioner worked 21 days in April, 1986. If this 21 days are taken into account for the preceding year, he worked only 204 days. As per the above statement, it can be seen from Ex. M22 prepared by MW4 and MW5 if the number of days are taken into account from March, 1986, he worked 201 days only in the preceding March, 1986. So in any way he did not work more than 240 days in the preceding year either to 30-4-1986 or to 31-3-1986.

(10) Point No. 2—In the result an award is passed holding that the peutioner Shri V. Shankar is not entitled to any relief.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 16th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner :

WW1—V. Shankar,

Witnesses examined for the respondent :

MW1—G. K. Sahu.

MW2—K. Venkateswarlu.

MW3—S. Kalyanchakravarthy.

MW4—T. Purnachandra Rao.

MW5—M. P. Jayaprasad.

Documents marked for the petitioner :

NIL

Documents marked for the respondent :

Ex. M1—Statement of working days particulars (Xerox copy).

Ex. M2—Xerox copy of Muster Roll for July, 1985.

Ex. M3—Letter dated 10-1-97 of the General Secretary of the Heavy Water Plant Welfare Society.

Ex. M4—List of casual employees engaged in HWP(M).

Ex. M5—Award copy dated 3-12-90 published in the Gazette in I.D. 55/88.

Ex. M6—Xerox copy of order of the Government of India dated 10-9-93 regarding the grant of temporary status and regularisation of casual workers.

Ex. M7—Order dated 11-4-89 in WP No. 14602/86.

Ex. M8—Order dated 3-4-89 in WP No. 14560/86.

Ex. M9—Minutes of conciliation dated 8-7-86.

Ex. M10—Failure report dated 27-2-95.

Ex. M11—Bunch of receipts (Xerox copies) given by WW1.

Ex. M12—Xerox copy of Muster Roll for November, 1983.

Ex. M13—Xerox copy of Muster Roll for December, 1983.

Ex. M14—Xerox copy of Muster Roll for September, 1984.

Ex. M15—Xerox copy of Muster Roll for October, 1984.

Ex. M16—Xerox copy of Muster Roll for April, 1985.

Ex. M17—Xerox copy of Muster Roll for May, 1985.

Ex. M18—Xerox copy of Muster Roll for June, 1985.

Ex. M19—Xerox copy of Muster Roll for August, 1985.

Ex. M20—Xerox copy of Muster Roll for September, 1985.

Ex. M21—Xerox copy of Muster Roll for October, 1985.

Ex. M22—Statement showing the particulars of working days.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना अश्वपुरम के प्रबन्धतन्त्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था।

[स. एल-42011/17/95-आईआर (डी.यू.)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Aswapuram and their workman, which was received by the Central Government on 16-1-1998.

[No. L-42011/17/95-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT:

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated 16th day of December, 1997
Industrial Dispute No. 107 of 1996

BETWEEN

The General Secretary Contract Labour and Daily Wages Workers Union (INTUC)
Aswapuram (Manugur) Dist. Khammam.
..Petitioner.

AND

The General Manager, Heavy Water Project.

Aswapuram (Manugur)
Dist. Khammam (A.P.) ..Respondent.

APPEARANCES:

Sri G. Ravi Mohan, advocate for the petitioner.
Sri. P. Damodar Reddy, advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/17/95-IR(DU) dt. 26-7-1995, referred the following dispute u/s. 10(1)-(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether the action of the management of Heavy Water Project in terminating the services of Shri V. Satyanarayana Reddy is legal and justified ? If not, to what relief the workman is entitled to ?"

Both the parties appeared and filed their pleadings.

(2) The workman concerned to this dispute, hereinafter called as 'Petitioner' filed a claims statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500 per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u/s. 12(3) of the I.D. Act between the management and the Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a Writ Petition No. 14560/96 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The Union raised a dispute I.D. No. 55/86 on the file of this Tribunal and this Tribunal passed a Award directing the respondent management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the cvonciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 to 30-9-1986. The termination of the petitioners is illegal and in violation of the settlement dt. 8-7-86 and Sec. 25-F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

(3) The respondent filed a counter contending as follows:.—The petitioner has no locus standi to raise this dispute. The respandent Department of Atomic Energy (DAE) was established in 1954 by a Presidential Order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not an industrial as it is sovereign function and so the I.D. is not maintainable. So this dispute is also a not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500 per month is not correct. The petitioner worked as casual labour from 1-3-1985. During the initial stages of construction work of the heavy water plant including its housing colony at Aswapuram number of unskilled, semi-skilled, skilled labourers were engaged on casual and purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D. Act to continue causal labour are without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of Section 25-F of I.D. Act. The petitioner d'd not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the writ petition was pending, the matter was referred to this Tribunal for adjudication. This Tribunal passed an award in I.D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to at least one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as WW1. He filed Ex. W1 showking that he filed an I.D. No. 82/96 on the file of Industrial Tribunal-I, Hyderabad. The Industrial Relations Officer, U.D. Clerk and Sr. Accounts Clerk are examined as MWs1 to 3 respectively. They filed Exs. M1 to M13.

(5) The points for consideration are :

(1) Whether the respondent is justified in terminating the services of the petitioner?

(2) If not, what relief the workman is entitled to?

(6) Point : 1:—The admitted facts of the case are as follows:—The Department of Atomic Energy Government of India intended to start Heavy Water Project, used for Atomic Energy purposes in Aswapuram in Khammam District. The Department acquired some Government and private lands and started constructions in 1983. The casual labour are employed for construction purpose, for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M5 list. This Tribunal passed Ex. M4 award dt. 3-12-1990 directing the respondent to absorb 185 workman into future vacancies. The respndent absorbed only 130 casual labour into regular vacancies. The Govt. of India passed Ex. M6 order giving temporary status for the remaining 55 persons. The petitioner was not

absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central), Vijayawada on 15-11-94 as evidenced by Ex. M10 failure report dt. 27-2-1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996. Meanwhile the petitioner filed I.D. No. 82|96 on the file of Industrial Tribunal at Warangal u|s. 2A-2 of I.D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to this Tribunal, the petitioner withdrew the said I.D. No. 82|96 on the file of Industrial Tribunal at Warangal.

(7) There was some agreement u|s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how, both the parties have not adverted to the same at all in the same at the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Sec. 25F. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

(9) The respondent filed Ex. M2 statement showing the attendants particulars of each workman that worked upto 30-9-86, said to have been prepared by MW2 a U.D. Clerk, at the instance of Mr. Stefen Balasundaram the then Administrative Officer. It was found out that the said holidays and sundays were not included in the number of days each workman worked therein, on comparing the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into court. So the respondent prepared Ex. M13 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited some of the Muster Rolls, produced almost all the muster rolls from November, 1983 when the respondent started to engage casual labour to September, 1986. Some muster rolls showed that some of the workmen worked in Oct. 1986 also. The Muster Rolls for April, '84, Dec. 1984 and August and September, 1986 were not produced. There is vast difference between Ex. M2 statement prepared by MW2 in 1986 or 1988 and Ex. M13 statement prepared by MW1 during the pendency of this dispute. So this Tribunal verified all the muster rolls which are marked and unmarked. They were made available for perusal of the counsel for the petitioner. The details of the number of days worked by the petitioner as per Ex. M2 and Ex. M13 and verification by this Tribunal are as follows :

11/83	12/83	1/84	12/84	3/84	4/84	5/84	6/84	7/84
8/84	9/84	10/84	11/84	12/84	1/85	2/85	3/85	4/85	5/85
6/85	7/85	8/85	9/85	10/85	11/85	12/85	1/86	2/86	3/86
4/86	5/86	6/86	7/86	8/86	9/86	Total			

As per Ex.M2 statement prepared by MW2 — 19 — — 27 19 26 91

As per Ex.M12 statement prepared by MW1 — 31 — 31

On verification by this tribunal as per availab le muster rolls : The above particulars are tallied.

It can be seen from the above statement, available muster rolls and the statements filed by the management witnesses, that the petitioner did not work 240 days in any year. He did not work for 240 days in the year preceding 30-9-1986, on which date the petitioner was admittedly retrenched. The petitioner worked only for 91 days as per Ex. M2 statement and 31 days as per Ex. M13 statement.

(10) Point No. 2 : In the result, an Award is passed holding that the petitioner Y.Satyanarayana Reddy is not entitled to any relief.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 16th of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner:

Witness examined for the respondent:

WW1 : Y. Satyanarayan Reddy

MW1 : G. K. Sahu

MW2 : T. Poornachandra Rao

MW3 : M. PP. Jayaprasad.

Documents marked for the petitioner:

Ex. W1 : Copy of the Award in I.D. No. 82|96 of Industrial Tribunal at Warangal.

Documents marked for the respondent:

Ex. M1 : Muster Roll No. 0254 wherein the WW1's wages were paid for the month of July '86.

Ex. M2 : Statement of working days.

Ex. M3 : Copy of Muster Roll for Nov. '83.

Ex. M4 : Award of this Tribunal in I.D. No. 55|88.

Ex. M5 : List of 185 workmen.

Ex. M6 : Order for temporary status and regularisation of workmen.

Ex. M7 : Judgment of Hon'ble High Court in WP No. 14560|86 dt. 3-4-89.

Ex. M8 : Judgment of Hon'ble High Court in WP. No. 14602|86 dt. 11-4-89.

Ex. M9 : Conciliation Proceedings.

Ex. M10 : Failure report.

Ex. M 11 : Bunch of Muster roll for the period Nov. '83 (xerox copies).

Ex. M12 : Xerox copy of Muster Roll for the period Dec. 1983.

Ex. M13 : Statement showing the working days particulars of WW1 and others.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 309.—औद्योगिक विवाद अधिनियम, 1947 (1947का14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना अश्वपुरम के प्रबन्धतन्त्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनबध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था ।

[स. एल-42011/19/95-आई आर (डी.यू.)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Heavy Water Project, Aswapuram and their workman, which was received by the Central Government on 16-1-98.

[No. L-42011/19/95-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I, HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I

Dated, 16th day of December, 1997

Industrial Dispute No. 104 of 1996

BETWEEN :

The General Secretary, Contract Labour, and Daily Wages Workers Union (INTUC), Aswapuram (Manugur) Dist. Khammam.

Petitioner.

AND

The General Manager, Heavy Water Project,

Aswapuram (Manugur) Dist. Khammam (A.P.),

Respondent.

APPEARANCES :

Sri G. Ravi Mohan, advocate—for the petitioner.

Sri P. Damodar Reddy, advocate—for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/19/95-IR(DU) dt. 26-7-1995. referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :—

"Whether the action of the management of Heavy Water Project in terminating the services of Sri Mohd. Gulam Khaja is legal and justified ? If not, to what relief the workman is entitled to ?"

2. The workman concerned to this dispute, hereinafter called as 'Petitioner' filed a claims statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500/- per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u/s. 12(3) of the I.D. Act between the Management and the Heavy Water Plant contract workers and employees union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-86. The union filed a writ petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No. 55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent-Management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the rererence made by the Govt. to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termintion of the petitioner is illegal and in violation of the settlement dt. 8-7-86 under sec. 25F of I.D. Act. Hence. the respondent may be ordered to re-instate the petitioner into service with all benefits including the back wages.

3. The respondent filed a counter contending as follows :—

The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not industry as it is sovereign function and so the I.D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500/- per month is not correct. The petitioner worked as casual labour from 1-9-86. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram, number of unskilled semi-skilled-skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of sec. 25F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant contract workers and employees union (Manugur) filed a writ petition before the Hon'ble High Court. While the writ petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said writ petition. This Tribunal passed an Award in I.D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. the respondent has to provide employment to atleast one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The Writ Petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW1. He did not file any document. The Industrial Relations Officer, Scientific Officer, Superviser, U.D. Clerk and Sr. Accounts Clerk are examined as MWs. 1 to 5. They filed Exs. M1 to M18.

5. The Points for consideration are :—

1. Whether the respondent is justified in terminating the services of the petitioner ?

2. If not, what relief the workman is entitled to ?

6. Point No. 1.—The admitted facts of the case are as follows :—

The Department of Atomic Energy, Government of India intended to start heavy water project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour are employed for construction purpose, for fetching water and other odd jobs. The construction went on upto Sep. 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers. This Tribunal passed an Award dt. 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award, as evidenced by the petitioner in the evidence as WW1.

7. There was some agreement u/s. 12(3) of the I.D. Act in between the union and management on 8-7-86 as referred to in the pleadings. Somehow both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

8. The present grievance of the petitioner is that though he worked 240 days. he was retrenched without following the provisions of sec. 25F of the I.D. Act. The contention of the respondent that the petitioner never worked on any day and so the claim itself is false one.

9. The Management filed some documents. It can be seen from Exs. M1 and M2 that the petitioner worked for 24 days in September, 1986 and 7 days in October, 1986 respectively. MW1 deposed that the petitioner worked only in Sep. 1986 and not to earlier that. It is also confirmed in the cross examination of MW1 that he did not file the earlier record as the petitioner did not work earlier to September, 1986. So also the other management witnesses depose that the petitioner worked only in September, 1986 and October, 1986 for certain days. MW3 who is working as Supervisor under the contractor, deposed that the petitioner worked under the contractor by name M/s. Thermal Engineer and Contractors, Aswapuram. He filed certain registers like Exs. M11 and M12 attendance registers for the year 1995-96 and 1996-97. Exs. M13 and M14 wages registers for 1995-96 and 1996-97 and Ex. M15 Provident Fund Register. These registers show that the petitioner was working under a contractor. Exs. M16 and M17 xerox copies of Muster Rolls filed by the respondent which were not objected by the counsel for the petitioner reveal that the petitioner's name does not find a place in them. Ex. M18 xerox copy of the statement showing the working days particulars of workmen which was prepared by MW4 and MW5 shows that the petitioner's name does not find a place in it. In the cross-examination. MW5 deposed that Ex. M18 was verified with the original Muster Rolls and the petitioner's name is not shown in the Muster Rolls till September, 1986. On perusal of all the documents filed by the respondent-management and MW3 who is working under a contractor, the petitioner worked only certain days in September, and October, 1986 only and he worked only under a contractor in between November, 1983 and September, 1986. The contention of the petitioner that he worked for 240 days in a year is not correct. The petitioner examined himself as WW1 deposed that "I worked as such till September, 1986". But he did not depose that he worked for 240 days in a year. He did not give any particulars of working days that he worked in between the period in question. It is also found from the available muster rolls which are filed in other batch cases that the petitioner's name does not find a place in between November, 1983 and September, 1986 in the Respondent-department. But it is found that the petitioner worked for 24 days in September, 1986 and 7 days in October, 1986 only.

(10) Point No. 2.—In the result, an Award is passed holding that the petitioner Sri Mohd. Gulam Khaja is not entitled to any relief.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal on this the 16th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner :

WW1—Mohd. Gulam Khaja.

Witnesses examined for the respondent :

MW1—G. K. Sahu.

MW2—P. Satyanarayana.

MW3—John Wilson.

MW4—T. Poornachandra Rao,

MW5—M. P. Jayaprasad.

Documents marked for the petitioner :

NIL

Documents marked for the respondent :

Ex. M1—Xerox copy of working days particulars.

Ex. M2—Xerox copy of Muster Roll for the month of October, 1986.

Ex. M3—Xerox copy of Muster Rolls maintained by a contractor.

Ex. M4—Failure Report dt. 27-2-95.

Ex. M5—List of casual employees engaged in HWP(M).

Ex. M6—Xerox copy of Gazette copy of Award in I.D. No. 55/88.

Ex. M7—Xerox copy of circular dated 10-9-93 regarding scheme for grant of temporary status and regularisation of workmen.

Ex. M8—Order copy of WP No. 14560/86 dated 3-4-89.

Ex. M9—Order copy of WP No. 14602/86 dated 11-4-89.

Ex. M10—Minutes of conciliation officer dated 8-7-86.

Ex. M11—Attendance Register 1995-96 of M/s. Thermal Engineers and Contractors.

Ex. M12—Attendance register for the year 1996-97 of M/s. Thermal Engineers and Contractors.

Ex. M13—Wages register for 1995-96 of M/s. Thermal Engineers and Contractors.

Ex. M14—Wages Register for the year 1996-97.

Ex. M15—Provident Fund Register from 1993 to April, 1996 of M/s. Thermal Engineers and Contractors.

Ex. M16—Xerox copy of Muster Roll for the month of November, 1983.

Ex. M17—Xerox copy of muster roll for the month of December, 1983.

Ex. M18—Xerox copy of the statement of working days particulars of workmen.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना, अश्वपुरम के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था।

[सं. एल-42011/21/95-आई आर (डी.यू.)]

के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 310.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Aswapuram and their workman, which was received by the Central Government on the 16-1-98.

[No. L-42011/21/95-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I HYDERABAD

Present : Sri V.V. Raghavan, B.A.,LL.B.
Industrial Tribunal-I.

Dated : 16th day of December, 1997.

Industrial Dispute No. 101 of 1996.

Between :

The General Secretary, Contract Labour and Daily Wages Workers Union (INTUC) Aswapuram (Manugur) Dist. Khammam. ——Petitioner.

And

The General Manager, Heavy Water Project,
Aswapuram (Manugur) Dist. Khammam (A.P.)
....Respondent

Appearances : Sri G. Ravi Mohan, advocate for the petitioner.

Sri P. Damodar Reddy, advocate for the respondent.

AWARD

The Government of India, Ministry of Labour New Delhi by its Order No. L-42011/21/95-IR(DU) dt. 26-7-1995, referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether the action of the management of Heavy Water Project in terminating the services of Shri V. Satyanarayana Reddy is legal and justified? If not, to what relief the workman is entitled to?"

Both the parties appeared and filed their pleadings.

2. The workman connected to this dispute, hereinafter called as 'Petitioner' filed a claim statement contending as follows:

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500/- per month orally. While performing his duties to the satisfaction of his superior, there was a settlement under sec. 12(3) of the I.D. Act between the management and the Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a Writ Petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No.55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent-Management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dt. 8-7-86 and sec. 25F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

3. The respondent filed a counter contending as follows:

The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential Order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and ti

is a sovereign function. The Supreme Court held that the Telecom Department is not an industry as it is sovereign function and so the I.D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500 per month is not correct. The petitioner worked as Casual labour from 10-4-86. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram, number of skilled/semi-skilled/skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of Sec. 25F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the Writ petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said writ petition. This Tribunal passed an Award in I.D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to atleast one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The petitioner also filed an I.D. No. 82/96 in the Industrial Tribunal -cum-Labour Court at Warangal. He cannot raise this dispute. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

4. The petitioner examined himself as WW1 He did not filed any document. The Industrial Relation Officer, Scientific Officer, Scientific Assistant Grade-C (Supervisor), U.D. Clerk and Senior Accounts Clerk are examined as MWs1 to 5 respectively. They filed Exs. M1 to M34.

The points for consideration are:

(1) Whether the sespondent is justified in terminating the services of the petitioner–?

(2) If not, what relief, the workman is entitled to."

6. Point 1 : The admitted facts of the case are as follows:

The Department of Atomic Energy, Government of India intended to start Heavy Water Project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for construction purpose. for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex.M11 list. This Tribunal passed Ex.M14 Award dt. 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absobed only 130 casual labour into regular vacancies. The Government of India passed Ex.M15 order giving temporary status for the remaining 55 persons. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central) Vijayawada on 11-11-1994 as evidenced by Ex. M5 Failure report dt. 27-2-1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996. Meanwhile the petitioner raised dispute I.D. No. 82/96 in the Industrial Tribunal at Warangal u/s. 2A-2 of I.D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to this Tribunal, the petitioner withdraw the said I.D. No. 82/96 on the file of Industrial Tribunal at Warangal.

There was some agreement u/s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Somehow both the parties have not adverted to the same at all, in the evidence. It was not relied upon by the workman also.

8. The present grievance of the petitioner is that though he worked for 240 days, he was retrenched without following the provisions of Sec. 25F of the I.D. Act. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

9. The respondent filed Ex.M1 statement showing the attendance particulars of each workman that worked upto 30-9-86, said to have been prepared by MW4 at the instance of Mr. Stefen Balasundaram the then administrative Officer. It was found out that the paid holidays and Sundays were not included in the number of days each workmen worked therein on comparing the statement with the nominal muster rolls which contain the name of

the workmen, number of days he worked and the wages paid to him and filed into Court. So the respondent prepared Ex. M-34 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited some of the muster roll, produced, almost all the muster rolls from November, 1983, when the respondent started to engage casual labour to September, 1986. Some mustered rolls showed that some of the workmen worked in October, 1986 also. The Muster Rolls for April, 1984 and December, 1984 and August and September, 1986 are not produced. There is vast difference in between Ex. M-1 statement prepared by M. W. 4 in 1986 or 1988 and Exm. 34 statement prepared by M. W. 4 and M. W. 5 during the pendency of this dispute. So this Tribunal verified all the muster rolls which are market and unmarked. They were made available for perusal of the counsel for the petitioner. The details of the No. of days worked by the petitioner as per Ex. M-1 and M-34 and verification by this Tribunal are as follows :—

11/	12/	1/	2/	3/	4/	5/	6/	7/	8/	9/	10/
83	83	84	84	84	84	84	84	84	84	84	84
11/	12/	1/	2/	3/	4/	5/	6/	7/	8/	9/	10/
84	84	85	85	85	85	85	85	85	85	85	85
11/	12/	1/	2/	3/	4/	5/	6/	7/	8/	9/	Total
85	85	86	86	86	86	86	86	86	86	86	

As per Ex.M1 Statement prepared by MW4 : — 27, 14, 27, 26, 25, —, — 13, 26, 26, 27, 21, 27 —, —, 26, 26, 27, 26—Total 364

As per Ex. M34 statement prepared by MW4 and MW5 : —, 17, 31, 31, 30, 31,30, —, —, 25, 31, 15, 31, 30, 28, —, —, 14, 29, 30, — Total 403.

On verification by this tribunal on available muster rolls : The above particulars are tallied with. The Muster Roll of December, 1984 is not filed. His name is found in the Muster Roll for July, 1986 for 29 days.

It can be seen from the above statement that the petitioner worked for 364 days as per Ex.M1 statement prepared by MW4 and as per Ex.M34 statement prepared by MW4 and MW5 the petitioner worked for 403 days. After verification of both the statements (Ex.M1 and M34) the petitioner worked for more than 240 days as per M1 in the year preceding 30-9-1986. So the termination is illegal and sec. 25F was not followed as notice pay and retrenchment compensation were not paid. It is found that the petitioner worked for more than 240 days.

10. Point No. 2 : Since the retrenchment is illegal, the petitioner is entitled to reinstatement and other benefits in the usual course. But the compensation is more reasonable relief than the reinstatement in the circumstances of the case. The industry was started by the Central Government in the interest of nation. It fixed the required staff, and filled up the posts. The respondent has already provided regular jobs to 130 workers and temporary status to 55 workers as per earlier Award of this Tribunal. The respondent has also to provide a job to a member each of the families of the land loosers. The Central Government sanctioned fixed strength of staff, the officers and the workmen to the respondent. This Tribunal cannot mulct the respondent with the workmen though they have no work. If the petitioner and similarly situated workmen are thrust upon the respondent, a large chunk of the funds allotted to the respondent for manufacture of heavy water, will be used to pay the wages. Besides, the petitioner raised a dispute more than 8 years after the retrenchment. In the said circumstances, an Award is passed directing the respondent to pay an amount of Rs. 10,000/- as compensation to the petitioner. The petitioner is entitled to interest at 12% per annum from one month after publication of the Award.

Dictated to the steno-typist, transcribed by him, corrected by me and given under may hand and the seal of this Tribunal this the 10th day of December, 1997.

V.V. RAGHAVAN, Industrial Tribunal-I

Witness examined for the petitioner:

WW1 : V. Satyanarayana Reddy

Witness examined for the respondent :

MW1 : G.K. Sahu
MW2 : M. Rajendra Reddy
MW3 : A. Lakshminarayana
MW4 : T. Purnachandra Rao
MW5 : M.P. Jayaprasad

Documents marked for the petitioner

—Nil—

Documents marked for the respondent

Ex.M1 : Xerox copy of the working days particulars.

Ex.M2 : Xerox copy of Muster Roll of July, 1984.

Ex.M3 : Xerox copy of the Muster Roll of December, 1985.

Ex.M4 : Xerox copy of Muster Roll of July, 1986.

Ex.M5 : Xerox copy of Failure report dt. 27-2-95.

Ex.M6 : Contract given to establishment M/s. Nirosna Constructions.

to M8

Ex.M9 : Gate pass given to WW1.

Ex.M10 : Note of the Department awarding the contract to V. Suryanarayana.

Ex.M11 : Xerox copy of the list of workmen.

Ex.M12 : Order dt. 3-4-89 in WP No. 14560/86.

Ex.M13 : Order dt. 11-4-89 in WP No. 14602/86

Ex.M14 : Award copy in I.D. No. 55/88.

Ex.M15 : Order of Govt. of India regarding regularisation of casual workers.

Ex.M16 : Xerox copy of minutes of conciliation officer.

Ex.M17 : Agreement entered into by the petitioner with Dy. Genl. Mgr.

Ex.M18 : Application of the petitioner for releasing the Bill amount.

Ex.M19 : Xerox copy of Running Account Bill.

Ex.M20 : Bunch of applications for issuing gate passes for the workers engaged by the petitioner.

Ex.M21 : Work Order given to M/s. Nirosha Constructions.

Ex.M22 : Bunch of papers regarding the work carried out by Nirosha Constructions.

Ex.M23 : Xerox copy of Muster Roll for the year 1983.

Ex.M24 : Xerox copy of Muster Roll for the period December, 1984.

Ex.M25 : -do- June, 1984.

Ex.M26 : -do- August, 1984.

Ex.M27 : -do- September, 1984.

Ex.M28 : -do- October, 1984.

Ex.M29 : -do- November, 1984.

Ex.M30 : -do- March, 1985.

Ex.M31 : -do- April, 1985.

Ex.M32 : -do- May, 1985.

Ex.M33 : -do- October, 1985.

Ex.M34 : Statement of working days particulars of the workman. illegible

Industrial Tribunal, Hyderabad.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना, अश्वपुरम के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था।

[सं. एल-42011/22/95-आईआर(डी.यू.)]

के.वी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Aswapuram and their workman, which was received by the Central Government on 16-1-98.

[No. L-42011/22/95-IR(DU)]

K.V. BUNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present : Sri V.V. Raghavan, B.A.,LL.B., Industrial Tribunal-I.

Dated : 16th day of December, 1997

Industrial Dispute No. 102 of 1996

BETWEEN :

The General Secretary, Contract Labour and Daily Wages Workers Union (TNTUC) Aswapuram (Manugur) Dist. Khammam. ——Petitioner.

AND

The General Manager, Heavy Water Project, Aswapuram (Manugur) Dist. Khammam (AP) ....Respondent.

APPEARANCES :

Sri G. Ravi Mohan, Advocate for the Petitioner.

Sri P. Damodar Reddy, Advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/22/95-IR(DU) dt. 26-7-1995, referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether the action of the management of Heavy Water Project in terminating the services of Shri Sathu Venkanna is legal and justified?

If not, to what relief the workman is entitled to?" Both the parties had filed their pleadings.

2. The workman concerned to this dispute, hereinafter called as 'Petitioner' filed a claim statement contending as follows:

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500/- per month orally. While performing his duties to the satisfaction of his superior, there was a settlement under Sec. 12(3) of the I.D. Act between the management

and the Heavy Water Plant contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a Writ Petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No. 55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent-Management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dt. 8-7-86 and Sec. 25F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

3. The respondent filed a counter contending as follows: The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not an industry as it is sovereign function and so the I. D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500/- per month is not correct. The allegation that the petitioner was terminated from service on 30-9-86 is equally false and baseless, since the petitioner had not worked at HWP(M) Plant. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram, number of unskilled, semi-skilled/ skilled labourers were engaged on casual,, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D .. Act to continue casual labourers without any break till the project was completed on regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of Section 25F of I.D. Act. The petitioner did not work for 240 days. The organisati o known as Heavy Water Plant contract workers and employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the Wri_ Petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said Writ petition. This Tribunal passed an award in I.D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were abosorbed and 55 employees are yet to be absorbed They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to atleast one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The Writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as WW1. He did not file any document. The Industrial Relation Officer, U. D. Clerk and Sr. Accounts Clerk are examined as MWs 1 to 3. They filed Exs. M1 to M4.

(5) The points for consideration are :

(1) Whether the respondent is justified in terminating the services of the petitioner?

(2) If not what relief, the workman is entitled to?

(6) Point No. 1 : The admitted facts, of the catse are as follows :

The Department of Atomic Energy, Government of India intended to start heavy water project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for constructions purpose, for fetching water and other odd jobs. The construction went on upto September, 1985. Almost all the workers were retrenched at that time. The Union raised a dispute I.D.No. 55/88 in this Tribunal with regard to the retrenched 185 workers.

This Tribunal passed an Award dt. 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award, as evidenced by the petitioner in his evidence as WW1.

(7) There was some agreement u/s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Sec. 25F of the I.D. Act. The contention of the respondent that the petitioner never worked on any day and so the claim itself is false one.

(9) The management filed some documents. It can be seen from Ex. M1 that the Industrial Relations Officer addressed a letter on 20-12-1996 to Pay and Accounts Officer, HWP(M) whether the petitioner had actually worked in Heavy Water Plant (Manuguru) during the period from 1-11-1983. to 30-9-1986. The Asst. Personnel Officer in turn replied vide Ex. M2 dt. 1-1-1997 that the records have been verified and it is confirmed that no person by name Shri Sathu Venkanne i.e. petitioner herein has been appointed during the period from 1983 to 1986. It can also be seen from the xerox copies of the Muster Rolls filed by the Managment which were not objected by the counsel for the petitioner that the petitioner's name does not find a place in it. Even in Ex. M 14 statement showing the attendance particulars for the period from November, 1983 to Sep. 1986, the petitioner's name also does not find a place. So the petitioner did not work on any day during the period from Nov. 1983 to Sep. 1986. It is also found from the evidences of MWs1 to 3 that the petitioner never worked in respondent-department. So the petitioner never worked in the respondent. department and he made a false claim in this Tribunal.

(10) Point No. 2 : In the result, an award is passed holding that the petitioner is not entitled to any relief as he made a falsee claim.

Dictated to the steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 16th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.

Appendix of Evidence

Witness examined for the petitioner :	Witness examined for the respondent :
WW1 : S. Venkanna	MW1 : G.K. Sahu
	MW2 : T. Poornachandra Rao
	MW3 : M.P. Jayaprasad

Dacuments marked for the petitioner :

Nil

Documents marked for the respondent :

Ex.M1 : Letter dt. 20-12-96 addressed to the Personnel Officer and Pay and Accounts Officer by MW1.

Ex.M2 : Letter of Asst. Personnel Officer dt. 1-1-97 regarding the petitioner's name does not find a place in the records.

Ex.M3 : Bunch of Muster Rolls for the mounth of Nov. 1983 (xerox copoies).

Ex.M4 : Statement of the working days particulars of the other workers showing the petitioner's name as blank.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना अश्वपुरम के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था।

[सं. एल-42011/24/95-आईआर (डीयू)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 312.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Hyderabad as shown in the Annexure, in the industrial dispute between the the employers in relation to the management of Heavy water Project, Aswapuram and their workman, which was received by the Central Government on the 16-1-98.

[No. L-42011/24/95-IR(DU)]
K. V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present :—Sri V.V. Raghavan, B.A., LL. B.,
Industrial Tribudal-I.

Dated : 16th day of December, 1997.

INDUSTRIAL DISPUTE NO. 100 OF 1996

Between :

The General Secretary, Contract Labour and Daily Wages Workers Union (TNTUC) Aswapuram /Manugur) Dist. Khammam..Petitioner.

And

The General Manager, Heavy Water Project,

Aswapuram (Manugur) Dist. Khammam (AP).. Respondent.

Appearances : Sri G. Ravi Mohan, advocate for the petitoner.

Sri P. Damodar Reddy, advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/24/95-IR(DU) dt. 26-7-1995 referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether the action of the management of Heavy Water Proejct in terminating the services of Shri M. Suryanarayana is legal and justified, If not, to what relief the workman is entitled to?"

Both the parties appeared and filed their pleading

(2) The workman concerned to this dispute, hereinafter called as 'Petitioner' filed a claims statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500 per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u/s. 12(3) of the I.D. Act between the management and the Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitoiner on 30-9-1986. The union filed a Writ Petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriat Court. The Union raised a dispute I. D. No. 55/88 on the file of this Tribunal and this Tribunal passed an Award directing the respondent-management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal, So the petitioner raised this dispute. The petitioner worked for 240 days in year in between 1-11-1983 to 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dt. 8-7-86 and Sec. 25-F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages

(3) The respondent filed a counter contending as follows :

The petitioner has no locus standi to riase this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The supreme Court held that the Telecom Department is not an industry as it is sovereign function and so this I.D. is not maintainable. So this dispute is also maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500 per month is not correct. The petitioner worked as casual labour from 1-3-1986. During the initial stages of construction work of the heavy water plant including its housing colony at Aswapuram number of unskilled, semi-skilled/skilled labourers were engaged on casual and purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s.12(3) of I.D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of Sec. 25F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the writ petition was pending, the matter was referred to this Tribunal for adjudication. This Tribunal passed an award in I.D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to atleast one member of the family of the land losers. due to acquisition of the land They are still to be accommodated. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as WW1. He did not file any document. The Industrial Relation Officer, U.D. Clerk and Sr. Accounts Clerk are examined as MWs 1 to 3. They filed Exs. M1 to M 13.

(5) The points for consideration are :

(1) Whether the respondent is justified in terminating the services of the petitioner ?

(2) If not, what relief, the workman is entitled to ?

(6) Point No. 1 : The admitted facts of the case are as follows :

The Department of Atomic Energy, Government of India intended to start Heavy Water Project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for construction purpose, for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M5 list. This Tribunal passed Ex. M4 Award dt. 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The Government of India passed Ex. M6 order giving temporary status for the remaining 55 persons. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central) Vijayawada on 11-11-1994 as evidenced by Ex. M10 failure a report dt. 27-2-1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996.

(7) There was some agreement u/s.12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Sec. 25F of the I.D. Act. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

(9) The respondent filed Ex. M2 statement showing the attendance particulars of each workman that worked upto 30-9-86, said to have been prepared by MW2 a U.D. Clerk, at the intance of Mr. Stefen Balasundaram the then Administrative Officer. It was found out that the paid holidays and Sundays were not included in the number of days each workman worked therein, on comparing the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into Court. So the respondent prepared Ex. M13 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited some of the Muster Rolls, produced almost all the muster rolls are from November, 1983 when the respondent started to engage casual labour to September, 1986. Some muster rolls showed that some of the workmen worked in October, 1986 also. The Muster Rolls for April, 84 and December, 1984 and August and September, 1986 were not produced. There is vast difference between Ex. M2 ststement prepared by MW2 in 1986 and 1988 and Ex. M13 statement prepared by MW1 during the pendency of this dispute. So this Tribunal verified all the muster rolls which are marked and unmarked. They were made available for persual of the counsel for the petitioner. The details of the number of days worked by the petitioner as per Ex.M2 and Ex.M13 and verification by this Tribunal are as follows :

11/ 12 1/ 2/ 3/ 4/ 5/ 6/ 7/ 8/ 9/ 10/ 11/ 12/
83 83 84 84 84 84 84 84 84 84 84 84 84 84
1/ 2/ 3/ 4/ 5/ /6 7/ 8/ 9/ 10/ 11/ 12/
85 85 85 85 85 85 85 85 85 85 85 85
1/ 2/ 3/ 4/ 5/ 6/ 7/ 8/ 9/ TTL
86 86 86 86 86 86 86 86 86

As per Ex. M2 Statement Prepared by MW2
—10 26 27 26 25 27 26 167

As per Ex. M13 Statement Prepared by MW1

On verification by this Tribunal on the available muster rolls

The above particulars are in Ex. M 13 collated.

It can be seen from the above statement, available muster rolls and the statements filed by the management witnesses, that the petitioner did not work 240 days in any year. He did not work for 240 days in the year preceding 30-9-1986, on which date the petitioner was admittedly retrenched. The petitioner worked only 167 days as per Ex. M2 Statement and 28 days as per Ex. M13 statement.

(10) Point No. 2 : In the result an Award is passed holding that the petitioner M. Suryanarayana is not entitled to any relief.

Dictated to the Steno-typists, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 16th day of December, 1997.

V. V. RAGHAVAN Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner : Witness examined for the respondent :

WW1 : N. Suryanarayana MW1 : G.K. Sahu
MW2 : T. Poornachandra Rao
MW3 : M.P. Jayaprasad

Documents marked for the petitioner :

Nil

Documents marked for the respondent :

Ex.M1 : Xerox copy of Muster Roll for July 86.

Ex.M2 : Xerox copy of statement of working days pertaining to WW1.

Ex.M3 : Xerox copy of Muster Roll for the month of November, 1983.

Ex.M4 : Xerox copy of the Award in I.D. No 55/88 dt. 3-12-90.

Ex.M5 : List of the casual employees engaged in HWP(M)(xerox copy).

Ex.M6 : Xerox copy of scheme of grant of temporary status and regularisation of casual workers.

Ex.M7 : Order dt. 3-4-89 of Hon'ble High Court in W.P. No. 145602/86.

Ex.M8 : Order dt. 11-4-89 of Hon'ble High Court in W.P. No. 14602/86.

Ex.M9 : Minutes of conciliation of ALC(C) Vijayawada.

Ex.M10 : Failure report dt. 27-2-95 submitted by ALC(C) Vijayawada.

Ex.M11 : Xerox copy of the Muster Roll-cum-Wages Register for Nov. 83.

Ex. M12 : Muster Roll for the period December, 1983.

Ex.M13 : Statement showing the working days particulals of the workman in this case.

नई दिल्ली, 16 जनवरी, 1998

का.आ. 313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना खम्माम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था ।

[सं. एल-42011/25/95-आईआर (डीयू.)]
के.बी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relaiotn to the management of Heavy Water Project, Khammam and their workman, which was received by the Central Government on 16-1-98.

[No. L-42011|25|95-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT:

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 16th day of December, 1997
Industrial Dispute No. 98 of 1996

BETWEEN

The General Secretary, Contract Labour and Daily Wages Workers Union (INTUC) Aswapuram (Manugur) Dist. Khammam. ..Petitioner

AND

The General Manager, Heavy Water Project, Aswapuram (Manugur) Dist Khammam (A.P.) ..Respondent.

APPEARANCES:

Sri G. Ravi Mohan, Advocate—for the petitioner.

Sri P. Damodar Reddy, Advocate—for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011|25|95-IR(DU) dt. 26-7-1995 referred the following dispute u|s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication:

"Whether the action of the management of Heavy Water Project in terminating the services of Shri R. Venkanna is legal and justified? If not, to what relief the workman is entitled to ?"

Both the parties appeared and filed their pleadings.

(2) The workman connected to this dispute, hereinafter called as 'Petitioner' filed a claim statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500 per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u|s. 12(3) of the I.D. Act between the management and the

Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The Union filed a Writ Petition No. 14560|86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No. 55|88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent Management to reinstate the workmen who were mentioned in the reference. The Union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dt. 8-7-86 and sec. 25-F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

(3) The respondent filed a counter contending as follows :

The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential Order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production or heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not an industry as it is sovereign function and so the I.D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500 per month is not correct. The petitioner worked as Casual Labour from 1-7-1985. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram, number of unskilled| semi-skilled|skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u|s. 12(3) of I.D Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provision of Sec. 25-F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the Writ petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said Writ Petition. This Tribunal passed an Award in I.D. No. 55|88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employment to atleast one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The petitioner also filed I.D. No. 81|96 in the Industrial Tribunal-cum-Labour Court at Warangal. He cannot raise this dispute. The Writ Petition filed by the Union was already dismissed by the Hon'ble Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as WW1. He did not file any document. The Industrial Relation Officer, U.D. Clerk and Sr. Accounts Clerk are examined as MWs 1 to 3 respectively. They filed Exs. M1 to M14.

(5) The points for consideration are :

1. Whether the respondent is justified in terminating the services of the petitioner?
2. If not, what relief the workmen is entitled to?

(6) POINT 1 : The admitted facts of the case are as follows :

The Department of Atomic Energy, Government of India intended to start Heavy Water Project, used for Atomic Energy purposes, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for construction purpose, for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55|88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M6 list. This Tribunal passed Ex. M7 Award dt. 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The Government of India passed Ex. M8 order giving temporary status for the remaining 55 persons. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central) Vijayawada on 11-11-1994 as evidenced by Ex. M3 Failure report dt. 27-2-1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996. Meanwhile the petitioner raised dispute I.D. No. 81|96 in the Industrial Tribunal at Warangal u|s. 2A-2 of I.D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to this Tribunal, the petitioner withdrew the said I.D. No. 81|96 on the file of Industrial Tribunal at Warangal.

(7) There was some agreement u|s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Sec. 25-F of the I.D. Act. The contention of the respondent is that the peti

petitioner worked for less than 240 days and so is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

(9) The respondent filed Ex. M1 statement showing the attendance particulars of each workman that worked upto 30-9-86, said to have been prepared by MW2 a U.D. Clerk, at the instance of Mr. Stefen Balasundaram the then Administrative Officer. It was found out that the paid holidays and Sundays were not included in the number of days each workmen worked therein on comparing the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into court. So the respondent prepared Ex. M14 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited some of the muster rolls, produced almost all the muster rolls from November, 1983 when the respondent started to engage casual labour to September, 1986. Some muster rolls showed that some of the workmen worked in October, 1986 also. The Muster Rolls for April '84 and December, '84 and August and September '86 are not produced. There is vast difference between Ex. M1 statement prepared by MW2 in 1986 or 1988 and Ex. M14 statement prepared by MW1 during the pendency of this dispute. So this Tribunal varified all the muster rolls which are marked and unmarked. They were made available for perusal of the caumsel for the petitioner. The details of the numberl of days worked by the petitioner as per Ex. M1 and Ex. M14 and verification by this Tribunal are as follows :

	11/83	12/83	1/84	2/84	3/84	4/84	5/84	6/84	7/84	8/84	9/84	10/84	11/84	12/84	1/85	2/85	3/85	4/85	5/85	6/85	7/85	8/85	9/85	10/85	11/85	12/85	1/86	2/86	3/86	4/86	5/86	6/86	7/86	8/86	9/86	Total
As per Ex.M1 Statement prepared by MW2	—	21	26	26	26	26	—	25	23	24	26	24	19	—	26	25																					317
As per Ex.M14 Statement prepared by MW1	—	23	—	30	—	29	30	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	112

On verification by this Tribunal on the available muster rolls : The above particulars are tallied.

The petitioner's name was also found in October, 1986 for 9 days.

It can be seen from the above statement that as per Ex. M1 prepared by MW2 the petitioner worked 317 days between the period 1-11-1983 and 30-9-86. He worked for 112 days as per Ex. M14 statement prepared by MW1. After verification of both the statements (Exs. M1 and M14), the petitioner worked for more than 240 days as per Ex. M1 in the year preceding 30-9-86. In any way the petitioner worked more than 240 days between the period 1-11-1983 and 30-9-1986. So the termination is illegal and Sec. 25F was not followed as notice pay and retranchment compensation were not paid. It is found that the petitioner worked for more than 240 days as per Ex. M1 statement prepared by MW2.

(10) Point No. 2 : Since, the retrenchment is illegal, the petitioner is entitled to reinstatement and other benefits in the usual course. But the compensation is more reasonable relief than the reinstatement in the circumstances of the case. The Industry was started by the Central Government in the interest of Nation. It fixed the required staff and filled up the posts. The respondent has already provided regular jobs to 130 workers and temporary status to 55 workers as per earlier award of this Tribunal. The respondent has also to provided a job to a member of each of the families of the land losers. The Central Government sanctioned fixed strength of staff, the officers and the workmen to the Respondent. This Tribunal cannot mulct the respondent with the workmen though they have no work. If the petitioner and also similarly situated workmen are thrust upon the respondent, a large chunk of the funds allotted to the respondent for manufacture of heavy water will be used to pay the wages. Besides, the petitioner raised a dispute more than 8 years after the retrenchment. In the said circumstances, an Award is passed directing the respondent to pay an amount of Rs. 10,000 as compensation to the petitioner. The petitioner is entitled to interest at 12% per annum from one month after publication of the Award.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 16th day of December, 1997

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner.

Witnesses examined for the respondent.

WW1 : R. Venkanna

MW1 : G. K. Sahu

MW2 : T. Poornachandra Rao

MW3 : M. P. Jayaprasad

Documents marked for the petitioner

NIL

Documents marked for the respondent

Ex. M1 : Xerox copy of the statement of working days particulars.

Ex. M2 : Xerox copy of muster roll for the month of Jan. 1986.

Ex. M3 : Failure report dt 22-2-95.

Ex. M4 : Xerox copy of the order dt. 3-4-89 in WP No. 14560/86.

Ex. M5 : Xerox copy of the order in WP No. 14602/86, dt. 11-4-89.

Ex. M6 : List of casual employees engaged in HWP (xerox copy).

Ex. M7 : Xerox copy of the Award dt. 3-12-90 in I.D. No. 55/88.

Ex. M8 : Xerox copy of Circular dt. 10-9-93 regarding scheme for grant of temporary status to the casual workers.

Ex. M9 : Minutes of conciliation dt. 8-7-86.

Ex. M10 : Xerox copy of Muster roll for Nov. 1983.

Ex. M11 : Xerox copy of Muster roll for Dec. 1983.

Ex. M12 : Xerox copy of Muster roll for Oct. 1985.

Ex. M13 : Xerox copy of Muster roll for Oct. 1986.

Ex. M14 : Working days particulars of the workmen.

Ex. M15 : Muster roll for the period Sep. 1985 (xerox copy).

नई दिल्ली, 16 जनवरी, 1998

का.आ. 314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना, खम्माम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था ।

[सं. एल-42011/28/95-आई आर (डी.यू.)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publises the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Khammam and their workman, which was received by the Central Government on the 16-1-1998.

[No. L-42011|28|95-IR (DU)]
K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Shri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 16th day of December, 1997.

INDUSTRIAL DISPUTE NO. 96 OF 1996.

BETWEEN :

The General Secretary, Contract Labour and Daily Wages Workers Union (INTUC), Aswapuram, (Manugur), District Khammam. ..Petitioner.

AND

The General Manager, Heavy Water Project, Aswapuram (Manugur), District Khammam (A. P.). ..Respondent.

APPEARANCES :

Shri G. Ravi Mohan, advocate for the Petitioner.

Shri P. Damodar Reddy, Advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-42011/28/95-IR (DU), dated 26-7-1995, referred the following dispute u/s. 10(1)(d) and 2-A of Industrial Disputes Act, 1947 for adjudication :—

"Whether the action of the management of Heavy Water Project in terminating the services of Shri Nallagatla Venkanna is legal and justified ? If not, to what relief the workman is entitled to ?"

Both the parties appeared and filed their pleadings.

(2) The workman connected to this dispute, hereinafter called as 'Petitioner' filed a claim statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500/- per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u/s. 12(3) of the I. D. Act between the management and the Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a Writ Petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I. D. No. 55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent-Management to reinstate the workmen who were mentioned in the reference. The union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dated 8-7-1986 and section 25-F of I. D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

(3) The respondent filed a counter contending as follows :

The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential Order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court hold that the Telecom Department is not an industry as it is sovereign function and so the I. D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500/- per month is not correct. The petitioner worked as Casual Labour from 1-8-1986. During the initial stage of construction work of the Heavy Water Plant including its housing colony at Aswapuram number of unskilled, semi-skilled/skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dated 8-7-1986 u/s. 12(3) of I. D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of section 25-F of I. D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the writ petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said writ petition. This Tribunal passed an Award in I. D. No. 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employers are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is abelated and time barred one. The respondent has to provide employment to at least one member of the family of the land losers due to acquisition of the land. They are still to be accommodated. The petitioner also filed an I. D. No. 83/96 in the Industrial-cum-Labour Court at Warangal. He cannot raise this dispute. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as W.W. 1. He did not file any document. The Industrial Relation Officer, U. D. Clerk and Sr. Accounts Clerk are examined as M. Ws. 1 to 3. respectively. They filed Exs. M-1 to M-15.

(5) The points for consideration are :

1. Whether the respondent is justified in terminating the services of the petitioner ?

2. If not, what relief, the workman is entitled to ?

(6) Point 1 : The admitted facts of the case are as follows :

The Department of Atomic Energy, Government of India intended to start Heavy Water Project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for constructions purpose, for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The union raised a dispute I. D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M-2 list. This Tribunal passed Ex. M-5 award dated 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The Government of India passed Ex. M-6 order giving temporary status for the remaining 55 persons. The petitioner was not absorbed in pursuance to the earlier award of this Tribunal as his name does not find a place in the award. So the petitioner approached the Assistant Labour Commissioner (Central) Vijayawada on 11-11-1994 as evidenced by Ex. M-7 Failure report dated 27-2-1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996. Meenwhile the petitioner raised dispute I. D. No. 83/96 in the Industrial Tribunal at Warangal u/s. 2-A-2 of I. D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to this Tribunal, the petitioner withdrew the said I. D. No. 83/96 on the file of Industrial Tribunal at Warangal.

There was some agreement u/s. 12(3) of the I. D. Act in between the Union and the Management on 8-7-1986 as referred to in the pleadings. Somehow both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of section 25-F of the I. D. Act. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30-9-1986.

(9) The respondent filed Ex. M-1 statement showing the attendance particulars of each workman that worked upto 30-9-1986, said to have been prepared by M.W. 2, a U.D. Clerk, at the instance of Mr. Stefen Balasundaram the then Administrative Officer. It was found out that the paid holidays and Sundays were not included in the number of days each workman worked therein on comprising the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into court. So the respondent prepared Ex. M-15 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited

some of the muster rolls, produced, almost all the muster rolls are from November, 1983 when the respondent started to engage casual labour to September, 1986. Some muster rolls showed that some of the workmen worked in October, 1986 also. The Muster rolls for April, 1984 and December, 1984 and August and September, 1986 are not produced. There is vast difference between Ex. M-1 statement prepared by M.W. 2 in 1986 or 1988 and Ex. M-15 statement prepared by M.W. 1 during the pendency of this dispute. So this Tribunal varified all the muster rolls which are marked and unmarked. They were made available for perusal of the counsel or the petitioner. The details of the number of days worked by the petitioner as per Ex. M-1 and Ex. M-15 and verification by this Tribunal are as follows :

11/83	12/83	1/84	2/84	3/84	4/ 84	5/84	6/84	7/84
8/84	9/84	10/84	11/84	12/84	1/85	2/85	3/85	4/85
5/85	6/85	7/85	8/85	9/85	10/85	11/85	12/85	1/86
2/86	3/86	4/86	5/86	6/86	7/86	8/86	9/86	Total

As per Ex. M1 Statement prepared by MW2 —

26	—	—	—	24	—	—	—	25	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
10	26																							111

As per Ex.M15 Statement pr pared by MW: 1

24	—	—	—	—	28	31	30	31	30	29	—	25	31	—	29	31								
—	—	—	—	—	—	—	—																	319

On verification by this Tribunal on the available muster rolls : All the above particulars are tallied. The petitioner worked in October, 1986 for 31 days.

It can be seen from the above statement that the petitioner worked for 111 days as per Ex. M-1 statement prepared by M. W. 2 and as per Ex. M-15 statement prepared by M. W. 1, the petitioner worked 319 days between the period from November, 1983 to September, 1986. It is also verified from the Muster rolls available on record, the petitioner worked also in October, 1986 for 31 days. After verification of both the statements (Exs. M-1 and M-15), the petitioner worked for more than 240 days as per Ex. M-15 in the year preceding 12 months to January, 1986. M. W. 2 and M. W. 3 deposed that Ex. M-15 was prepared by them and verified from the original Muster Rolls. So in any way the petitioner worked more than 240 days in between 11-11-1983 and 30-9-1986. So the termination is illegal and section 25-F was not followed as notice pay and retrenchment compensation were not paid. It is found that the petitioner worked for more than 240 days.

(10) Point No. 2 : Since the retrenchment is illegal, the petitioner is entitled to reinstatement and other benefits in the usual course. But the compensation is more reasonable relief than the reinstatement in the circumstances of the case. The Industry was started by the Central Government in the interest of nation. It fixed the required staff and filled up the posts. The respondent has already provided regular jobs to 130 workers and temporary status to 55 workers as per earlier Award of this Tribunal. The respondent has also to provide a job to a member of each of the families of the land losers. The Central Government sanctioned fixed strength of staff, the officers and the workmen to the respondent. This Tribunal cannot mulct the respondent with the workmen though they have no work. If the petitioner and similarly situated workmen are thrust by the respondent, a large chunk of the funds allotted to the respondent for manufacture of heavy water will be used to pay the wages. Besides, the petitioner raised a dispute more then 8 years after the retrenchment. In the said circumstances, an award is passed directing the respondent to pay an amount of Rs. 10,000/- as compensation to the petitioner. The petitioner is entitled to interest at 12% per annum from one month after publication of the Award.

Dictated to the steno-typiest, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 16th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I.

Appendix of Evidence

Witness examined for the petitioner.

W.W. 1 : N. Venkanna.

Witness examined for the respondent :

M.W. 1 : G. K. Sahu.

M.W. 2 : T. Poornachandra Rao.

M.W. 3 : M. P. Jayaprasad.

Documents marked for the petitioner

NIL

Documents marked for the petitioner :

Ex. M-1 : Xerox copy of working days particulars.

Ex. M-2 : Xerox copy of list of the casual workmen.

Ex. M-3 : Xerox copy of the order of High Court dated 3-4-1989 in W P. 14560/86.

Ex. M-4 : Xerox copy of the order of High Court dated 11-4-1989 in W. P. 14602/86.

Ex. M-5 : Award dated 3-12-1990 in I. D. No. 55/88.

Ex. M-6 : Government orders regarding the scheme of regularisation of casual labour.

Ex. M-7 : Failure report of ALC dated 27-2-1995.

Ex. M-8 : Minutes of conciliation dated 8-7-1986.

Ex. M-9 : Xerox copy of Muster roll for the period November, 1983.

Ex. M-10 : Xerox copy of Muster roll for the period December, 1983.

Ex. M-11 : Xerox copy of Muster roll for the period April, 1985.

Ex. M-12 : Xerox copy of Muser roll for the period May, 1985.

Ex. M-13 : Xerox copy of Muster roll for the period June, 1985.

Ex. M-14 : Xerox copy of Muster roll for the period October, 1985.

Ex. M-15 : Statement showing the working days particulars of the petitioner.

Sd/-

Industrial Tribunal-1 (Hyd.)

नई दिल्ली, 16 जनवरी, 1998

का.आ. 315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारी पानी परियोजना, खम्माम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-98 को प्राप्त हुआ था ।

[सं. एल-42011/29/95-आई आर (डी.यू.-1)]

के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 16th January, 1998

S.O. 315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Water Project, Khammam and their workman, which was received by the Central Government on 16-1-98.

[No. L-42011/29/95-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A.,LL.B., Industrial Tribunal-I.

Dated, 16th day of December, 1997

Industrial Dispute No. 95 of 1996

BETWEEN

The General Secretary, Contract Labour and Daily Wages Workers Union (TNTNC), Aswapuram (Manugur), Distt. Khammam. ...Petitioner.

AND

The General Manager, Heavy Water Project, Aswapuram (Manugur), District Khammam (A.P.). ...Respondent.

APPEARANCES :

Sri G. Ravi Mohan, Advocate for the petitioner.

Sri P. Damodar Reddy, Advocate for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-42011/29/95-IR(DU) dated 26-7-1995, referred the following dispute u/s. 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether the action of the management of Heavy Water Project in terminating the services of Shri M. Madaiah is legal and justified ? If not, to what relief the workman is entitled to ?"

Both the parties appeared and filed their pleadings.

(2) The workman connected to this dispute, hereinafter called as petitioner filed a claim statement contending as follows :

The petitioner was appointed on 1-11-1983 as a Helper on a monthly wage of Rs. 500 per month orally. While performing his duties to the satisfaction of his superior, there was a settlement u/s. 12(3) of the I.D. Act between the management and the Heavy Water Plant Contract Workers and Employees Union by which the management agreed to continue the temporary employees till the project is completed. The petitioner was on the rolls of the respondent as on 8-7-1986. But the respondent terminated the services of the petitioner on 30-9-1986. The union filed a Writ Petition No. 14560/86 before the High Court of Andhra Pradesh but it was dismissed with a direction to approach the appropriate court. The union raised a dispute I.D. No. 55/88 on the file of this Tribunal. This Tribunal passed an Award directing the respondent-Management to reinstate the workmen who were mentioned in the reference. The Union has not included the name of the petitioner during the conciliation proceedings and so his name does not find a place in the reference made by the Government to this Tribunal. So the petitioner raised this dispute. The petitioner worked for 240 days in a year in between 1-11-1983 and 30-9-1986. The termination of the petitioner is illegal and in violation of the settlement dated 8-7-86 and section 25-F of I.D. Act. Hence, the respondent may be ordered to reinstate the petitioner into service with all benefits including the back wages.

(3) The respondent filed a counter contending as follows.— The petitioner has no locus standi to raise this dispute. The respondent-Department of Atomic Energy (DAE) was established in 1954 by a Presidential Order. The aim of the respondent is using Atomic Energy for electricity generation and other applications, such as in medicine, agriculture, food technology, industry and research. The respondent is engaged in the production of heavy water and it is a sovereign function. The Supreme Court held that the Telecom Department is not an industry as it is sovereign function and so the I.D. is not maintainable. So this dispute is also not maintainable. The contention of the petitioner that he was appointed as Helper on 1-11-1983 and paid Rs. 500 per month is not correct. The petitioner worked as Casual Labour from 1-5-1985. During the initial stages of construction work of the Heavy Water Plant including its housing colony at Aswapuram number of unskilled semi-skilled/skilled labourers were engaged on casual, purely on temporary basis for attending to various works. The respondent agreed by settlement dt. 8-7-86 u/s. 12(3) of I.D. Act to continue casual labourers without any break till the project was completed or regular appointments were made whichever is earlier. The respondent has not violated the said settlement or the provisions of sec. 25-F of I.D. Act. The petitioner did not work for 240 days. The organisation known as Heavy Water Plant Contract Workers and Employees Union (Manuguru) filed a Writ Petition before the Hon'ble High Court. While the writ petition was pending, the matter was referred to this Tribunal for adjudication. Then the Hon'ble High Court dismissed the said Writ Petition. This Tribunal passed an award in I.D. No 55/88 on 3-12-1990 with a direction to absorb 185 workers against future vacancies. Many of them were absorbed and 55 employees are yet to be absorbed. They are given temporary status. The petitioner's name does not find a place in the said dispute. The petitioner's claim is a belated and time barred one. The respondent has to provide employed to atleast one member of the family of the land loosers due to acquisition of the land. They are still to be accommodated. The petitioner also filed an I.D. No. 84/96 in the Industrial Tribunal-cum-Labour Court at Warangal. He

cannot raise this dispute. The writ petition filed by the union was already dismissed by the Hon'ble High Court. Hence, the petitioner is not entitled to any relief.

(4) The petitioner examined himself as WW1. He did not file any document. The Industrial Relation Officer, U. D. Clerk and Sr. Accounts Clerk are examined as MWs. 1 to 3. They filed Exs. M1 to M14.

(5) The points for consideration are :

(1) Whether the respondent is justified in terminating the services of the petitioner ?

(2) If not, what relief the workman is entitled to ?

(6) *Point 1.*—The admitted facts of the case are as follows.—The Department of Atomic Energy, Government of India intended to start Heavy Water Project, used for Atomic Energy purpose, in Aswapuram in Khammam District. The Department acquired some Government and Private Lands and started constructions in 1983. The casual labour were employed for construction purpose, for fetching water and other odd jobs. The construction went on upto September, 1986. Almost all the workers were retrenched at that time. The Union raised a dispute I.D. No. 55/88 in this Tribunal with regard to the retrenched 185 workers shown in Ex. M5 list. This Tribunal passed Ex. M4 Award dated 3-12-1990 directing the respondent to absorb 185 workmen into future vacancies. The respondent absorbed only 130 casual labour into regular vacancies. The Government of India passed Ex. M6 order giving temporary status for the remaining 55 persons. The petitioner was not absorbed in pursuance to the earlier award of this tribunal as his name does not find a place in the Award. So the petitioner approached the Assistant Labour Commissioner (Central) Vijayawada on 11-11-1994 as evidenced by Ex. M3 failure Report dated 27-2 1995. This reference was made on 26-7-1995 but received in this Tribunal on 12-8-1996. Meanwhile the petitioner raised dispute I.D. No. 84/96 in the Industrial Tribunal at Warangal u/s. 2A-2 of I.D. Act. The learned counsel for the petitioner represented that subsequent to the present reference to this Tribunal, the petitioner withdrew the said I.D. No. 84/96 on the file of Industrial Tribunal at Warangal.

(7) There was some agreement u/s. 12(3) of the I.D. Act in between the Union and the Management on 8-7-86 as referred to in the pleadings. Some how both the parties have not adverted to the same at all in the evidence. It was not relied upon by the workman also.

(8) The present grievance of the petitioner is that though he worked 240 days, he was retrenched without following the provisions of Section 25-F of the I.D. Act. The contention of the respondent is that the petitioner worked for less than 240 days and so he is not entitled to any relief, though the respondent admitted that the petitioner was disengaged as casual labour from 30 9-1986.

(9) The respondent filed Ex. M2 statement showing the attendance particulars of each workman that worked upto 30-9-86. said to have been prepared by MW2 a U. D. Clerk, at the instance of Mr. Satefen Balasundaram the then Administrative Officer. It was found out that the paid holidays and sundays were not included in the number of days each workman worked therein on comparing the statement with the nominal muster rolls which contain the name of the workman, number of days he worked and the wages paid to him and filed into court. So the respondent prepared Ex. M12 another statement showing the particulars of attendance of each casual labour from November, 1983 to September, 1986 including the working days and paid holidays. The respondent though exhibited some of the muster rolls, produced almost all the muster rolls from November, 1983 when the respondent started to engage casual labour to September, 1986. Some muster rolls showed that some of the workmen worked in October, 1986 also The Muster Rolls for April, 84 and December, 85 and August and September, 1986 are not produced. There is vast difference between Ex. M2 statement prepared by MW2 in 1986 or 1988 and Ex. M12 statement prepared by MW1 during the pendency of this Dispute. So this Tribunal verified all the muster rolls which are marked and unmarked. They were made available for perusal of the counsel for the petitioner. The details of the number of days worked by the petitioner as per Ex. M2 and Ex. M12 and verification by this Tribunal are as follows :—

	11/83	12/83	1/84	2/84	3/84	4/84	5/84	6/84	7/84	8/84	9/84	10/84	11/84	12/84	1/85	2/85	3/85	4/85	5/85	6/85	7/85	8/85	9/85	10/85	11/85	12/85	1/86	2/86	3/86	4/86	5/86	6/86	7/86	8/86	9/86	Total
As per Ex.M2 Statement prepared by MW2	27	23	22	26	27	27	11	27	27	23	22	21	24	—	23	27	25																			369
As per Ex.M12 Statement prepared by MW1	28	31	30	—	31	28	—	—	31	23	—	—	30	31	—	31	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	325
On verification by this Tribunal on the availabl muster rolls :	28	31	30	31*	31	28	—	—	21	23	—	—	30	31	—	31	—	—	—	—	—	—	—	26*	—	—											382

*It is found that Muster Roll pertains to 12/84 is not filed. Hence 31 days added since he worked n 11/84 and 1/85. As per Ex.M1 he worked for 26 days in 7/86.

Since the respondent did not produce the Muster Roll for December, 1984, this Tribunal has taken 31 days in December, 1984 added them to the total number of days as the petitioner worked in preceding and succeeding months i.e. November, 84 and January, 1985 and he worked for 26 days in July, 1986 as per Ex. M1 Muster Roll. So the total working days of the petitioner comes to 382 days. After verification of both the statements (Exs. M2 and M12), the petitioner worked for more than 240 days as per Ex. M2 in the year preceding 30-9-1986 on which date the petitioner was admittedly retrenched. So the termination is illegal and sec. 25F was not followed as notice pay and retrenchment compensation were not paid. It is found that the petitioner worked for more than 240 days.

(10) Point No. 2.—Since the retrenchment is illegal, the petitioner is entitled to reinstatement and other benefits in the usual course. But the compensation is more reasonable relief than the reinstatement in the circumstances of the case. The Industry was started by the Central Government in the interest of nation. It fixed the required staff and filled up the posts. The respondent has already provided regular jobs to 130 workers and temporary status to 55 workers as per earlier award of this Tribunal. The respondent has also to provide a job to a member of each of families of the land loosers. The Central Government sanctioned fixed the strength of staff the officers and the workmen to the respondent. This Tribunal cannot mulct the respondent with the workmen though they have no work. If the petitioner and also similarly situated workman are thrust by the respondent, a large chunk of the funds allotted to the respondent for manufacture of heavy water will be used to pay the wages. Besides, the petitioner raised a dispute more than 8 years after the retrenchment. In the said circumstances, an Award is passed directing the respondent to pay an amount of Rs. 10,000/- as compensation to the petitioner. The petitioner is entitled to interest at 12% per annum from one month after publication of the Award.

Dictated to the seno-typist, transcribed by him, corrected by me given under my hand and the seal of this Tribunal this the 16th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witness examined for the petitioner :	Witnesses examined for the respondent :
WW1—M. Mallayya.	MW1—G. K. Sahu

MW2—T. Poornachandra Rao

MW3—M. P. Jayaprasad.

Documents marked for the petitioner

NIL

Documents marked for the respondent :

Ex. M1—Muster roll for June '86 of the petitioner.

Ex. M2—Xerox copy of statement of working days particulars.

Ex. M3—Xerox copy of the Failure report dt. 27-2-95.

Ex. M4—Xerox copy of the Award in I.D. No. 55/88.

Ex. M5—Xerox copy of list of casual employees engaged in H.W.P.

Ex. M6—Xerox copy of order dt. 10-9-93 of the Govt. O.M. No. 51016/2/90 regarding scheme for grant of temporary status and regularisation of casual workers

Ex. M7—Order of Hon'ble High Court dt. 11-4-89 in WP No. 140602/86 (xerox copy).

Ex. M8—Order dt. 3-4-89 of the Hon'ble High Court in WP No. 14560/86 (xerox copy).

Ex. M9—Minutes of conciliation dt. 8-7-86 (xerox copy).

Ex. M10—Xerox copy of Muster Roll for the month of June '85.

Ex. M11—Xerox copy of the Muster Roll for Oct. '85.

Ex. M12—Xerox copy of the statement showing working days particulars of the petitioner.

Ex. M13—Xerox copy of the Muster Roll for the month of Nov. 1983.

Ex. M14—Xerox copy of the Muster Roll for the month of Dec. 1983.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 12 जनवरी, 1998

का.आ. 316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-I, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-98 को प्राप्त हुआ था ।

[सं. एल-17012/14/95-आईआर (बी-2)]
सनातन, डैस्क अधिकारी

New Delhi, the 12th January, 1998

S.O. 316.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 9th January, 1998.

[No. L-17012/14/95-IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated, the 20th day of December, 1997

Industrial Dispute No. 128 of 1996

BETWEEN

E. V. R. V. Prasad,
C/o. R. Veeraiah,
H. No. 5-82-84,
Friends Colony, Old Bowenpalli,
Secunderabad. ...Petitioner.

AND

The Zonal Manager,
L.I.C. of India,
Secretariat Road,
Hyderabad. ...Respondent.

APPEARANCES :

Sri G. Vidyasagar, Advocate—for the petitioner.

Sri I. Dakshina Murthy, Advocate—for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-17012/14/95-IR (B-II) dated 18th/19th September, 1996, referred the following dispute under section 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether the Zonal Manager, LIC Hyderabad is justified for not appointing Sri EVSU Prasad in a Suitable job on compassionate ground due to death of his father Sri E. Satyanarayana ? If not, to what relief is he entitled to ?"

Both the parties appeared and filed their pleadings.

(2) The averments in the claim statement of the petitioner are as follows :

The petitioner's father V. Satyanarayana died on 1st June, 1983 while working as Record Clerk in the Divisional Office, L.I.C., Machilipatnam. The petitioner made a representation on 10th September, 1983. He made representations again on 20th July, 1986, 29th October, 1987 and 6th July, 1988, after attaining the majority to the Divisional Manager, L.I.C. requesting to appoint him on compassionate grounds. The petitioner

passed 9th class and registered himself in the Employment Exchange in the year 1988. He belongs to B. C. Community. The respondent refused to appoint the petitioner on the ground of minority at the time of application on 10th September, 1983 i.e. within one year after death of his father. The denial of the respondent to appoint the petitioner on compassionate grounds is illegal and the respondent may be directed to appoint the petitioner in Class III or Class IV post with consequential benefits.

(3) The respondent filed a counter which is as follows :

The petitioner's father died on 1st June, 1983. For the appointment on compassionate grounds is governed by Instruction 22 of Life Insurance Corporation of India Recruitment of Class III and Class IV Staff, Instructions, 1979, age and qualification can be relaxed in case of spouse, son or unmarried daughter of the employee subject to the availability of the vacancy in the sanctioned cadre and subject to an application made within one year of the death of the employee. Further under the Recruitment Instructions, 1993 the time limit of one year was extended upto three years from the date of death where all the children are minors. But the petitioner made an application on 6th July, 1988 only i.e. after a lapse of 5 years. The Supreme Court held so after considering the Recruitment Instructions of the LIC, in AIR 1994 SC 2148. The petitioner is not entitled for appointment. Respondent has not received representations dated 10th September, 1983, 20th July, 1986 and 20th October, 1997. Hence, the reference may be rejected.

(4) The petitioner examined himself as WW1 and filed Ex. W1 to W10. The respondent examined its Asst. Administration Officer as MW1 and filed Ex. M1.

(5) The point for consideration is :

"Whether the respondent is justified in not appointing the petitioner in a suitable job on compassionate grounds ?"

(6) POINT.—It is an admitted fact that Sri V. Satyanarayana the father of the petitioner died on 1st June, 1983 while he was working as Record Clerk in the Divisional Office LIC at Machilipatnam. His wife predeceased him. His family consists of his two daughters and a son. The elder daughter was married by the date of his death. The petitioner who is the son and another daughter were minors by then.

(7) As per the rules and regulations of the LIC of which Ex. M1 is a copy, compassionate appointment can be made :

(1) after relaxation of educational qualifications and age provided the applicant is a widow, son and unmarried daughter of the employee.

(2) None of the members of the family—widow, son and unmarried daughter is gainfully employed.

(3) the application received within one year from the date of death of the employee; and

(4) the appointments shall be subject to the existance of the vacancy in the sanctioned post.

(8) The petitioner pleads that he submitted the original of Ex. W2 application dated 10th September, 1983 for appointing him on compassionate grounds, after he attains the majority as he was aged 15 years only by then. The respondent pleads that the petitioner did not apply within one year after the death of his father, and that he applied for the first time on 6th July, 1988 to which Ex. W4 reply was given, denying the request as per the rules.

(9) The principle contention of the respondent is that the petitioner did not apply within one year after his father's death, is violation of the rules and so the petitioner is not entitled for appointment on compasionate grounds. The petitioner claims that he applied on 10th September, 1983 by submitting the original of Ex. W2 application but he could not prove the same. He did not file postal receipt or postal acknowledgement in proof of submitting his application. The respondent is a Corporation. The other employees will be very sympathetical towards the members of the family of a deceased employee. They would not suppress the representation if any made by the petitioner. The Supreme Court had considered the above said rules of the LIC in AIR 1994 SC 2148—1994 LLJ 569 (LIC of India Vs. Mrs. A. R. Ambekar & Another) wherein it is held that Instructions which contain provision for appointment on compassionate grounds are statutory in character and therefore they have force of law. A person cannot be ordered for appointment, in violation of the conditions of Recruitment instructions and staff regulations. In the said case one of the member of the deceased employee was gainfully employed so the Supreme Court held that another member of the family of the deceased employee cannot apply on compassionate grounds. A Division Bench of Gujarat High Court also held in L.P.A. No. 118/93 (LIC of India Vs. Rekhaben Kanaivalal Parmar) that the dependents of the decease employee should apply within 2 years from the date of demise of the employee and within 3 years in case where the children are minors and if none in the family is eligible for appointment within that period, the Court cannot rewrite the policy itself. The same plea was upheld by High Court of Andhra Pradesh in W.P. 17255 of 1986 (T. R.

Sekhar Vs. LIC of India) (Refer to Legal Digest published by LIC in September, 1994 part XIII volume IV.

(10) The learned advocate for the petitioner relied upon the Judgement of High Court of Andhra Pradesh reported in 1996 (1) LLJ page 745 (M. Subrahmanyeswara Rao vs. Divisional Manager, APSRTC & another) in which our High Court had to consider the appointment of the son of the deceased employee, 5 years after the death of the employee. The learned Judge found as per the clarification dated 7th July, 1988 issued by the Management, that when a son or a daughter of the deceased employee was a minor at the time of death of the employee, application presented after a lapse of 5 years also may be considered for selection, in the service of the Corporation. Since, the said clarification provided entitlement of application after 5 years of death of the deceased employee, the learned Judge gave a direction to consider the son for appointment in the suitable post but such a clarification is not available in our present rules. The Supreme Court in 1995 (1) LLJ page 798—1994 (68) FLR S.C. 1191 (Umesh Kumar Nagpal vs. State of Haryana & others) held that a compassionate appointment cannot be granted after a lapse of the reasonable period which must be specified in the rules. The consideration for such an employment is not a vested right which can be exercised at any time in future. This decision was followed by Supreme Court in 1996 (1) LLJ page 1066 Haryana State Electricity Board vs. Naresh Tanwar & another etc. etc.). The learned judge held that the compassionate appointment cannot be granted after a lapse of a reasonable period. The Division Bench of our High Court in 1996 (3) ALD 250 held that when the rules of District Central Co-operative Bank Limited, specified that application should be made for compassionate appointment within two years after the death of the employee. The application was submitted more than two years after the death. The Division Bench considered the decisions of the Supreme Court and laid down the conditions for the appointment on compassionate grounds as follows :

"Based on the authoritative pronouncements of the Supreme Court the following principles emerge which should guide while considering cases relating to appointment in public services on compassionate grounds."

(a) Appointment on compassionate ground is an exception to the general rule of equality enshrined in Articles 14 and 16 of Constitution of the India. That too, only, in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means.

(b) The employment on compassionate ground can be made only to classes III and IV posts non-withstanding the higher qualifications of the dependent or the post held by the deceased employee.

(c) The consideration for employment in post on compassionate ground is not a vested right which can be exercised at any time or offered after whatever lapse of time.

(d) Compassionate employment has necessarily to be made in accordance with rules or executive instructions issued by the Government or public authority concerned.

(e) And above all, such appointment should be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable post for appointment supernumerary post should be created to accommodate the applicant. Denial of appointment of dependant on compassionate ground on account of any ban imposed for fresh appointments would be arbitrary.

And as regards the nature of orders to be passed it should not be forgotten that the High Court in exercise of Jurisdiction under Article 226 of the Constitution of India cannot issue a Writ of Mandamus to an employer to provide appointments on compassionate ground. It can only direct consideration of the claim of the dependent in accordance with the rules.

Under the above circumstances, no relief can be granted to the petitioner.

(11) In the result, an Award is passed holding that the respondent is justified in not appointing the petitioner on compassionate grounds as per the law. However, the respondent shall consider the case sympathetically.

Dictated to Steno-typist, transcribed by her, corrected by me and given under my hand and the seal of this Tribunal this the 20th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of Evidence

Witnesses examined for the petitioner :

WW1 : Sri E. V. S. V. Prasad.

Witnesses examined for the respondent :

MW1 : B. Swarajya Laxmi.

Documents marked for the petitioner :

Ex. W1 : Xerox copy of death certificate of E. Satyanaraya dated 22nd June, 1983.

Ex. W2 : Application dated 10th September, 1983 submitted by the petitioner to LIC.

Ex. W3 : Representation dated 20th July, 1986 submitted by the petitioner.

Ex. W4 : Letter dated 4th August, 1988 of Sr. Divisional Manager to the petitioner with regard to not considering the appointment.

Ex. W5 : Xerox copy of registration of certificate dated 8th August, 1988.

Ex. W6 : Xerox copy of transfer certificate.

Ex. W7 : Xerox copy of representation dated 10th August, 1988 submitted by the petitioner.

Ex. W8 : Representation dated 5th September 1989 of the petitioner.

Ex. W9 : Application for conciliation.

Ex. W10 : Xerox copy dated 22nd July, 1994 last representation submitted by the petitioner.

Documents marked for the respondent:

Ex. W1 : True copy of extract of Instruction No. 22 of LIC recruitment of Class III and Class IV staff instruction 1979.

नई दिल्ली, 13 जनवरी, 1998

का.आ. 317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उसके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-98 को प्राप्त हुआ था।

[सं. एल-22012/128/95-आईआर (सी-2)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 13th January, 1998

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of F.C.I. and their workmen, which was received by the Central Government on the 9-1-1998.

[No. L-22012/188/95-IR CII]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR.

Industrial Dispute No. 116 of 1995

In the matter of dispute between :

Sachiv,
Bhartiya Khadya Nigam Karamchari Sangh,
5-6, Habibullah Estate,
Hazaratganj,
Lucknow.

AND

Regional Manager,
Bhartiya Khadya Nigam,
5-6, Habibullah Estate Hazaratganj,
Lucknow.

APPEARANCE :

I.B. Singh for the Union and S.K. Nigam for the Management.

AWARD

1. Central Government, Ministry of Labour, vide Notification No. L-22012/128/95-IR(C-II) dated 10th October, 1995, has referred the following dispute for adjudication to this Tribunal:—

> Whether the action of Sr. Regional Manager Food Corporation of India, Lucknow is legal and justified to withdraw the promotion order dated 30-12-1987, of Sh. Bani Singh A.G. III w.e.f. 6-5-1988 and also imposing punishment of stoppage of three increments with cumulative effect with recovery of Rs. 5752 from the workman? If not, to what relief he is entitled?

2. The concerned workman was admittedly working at Assistant Grade (III) Depot with the opposite party Food Corporation of India. He was promoted as A.G. II vide order dated 20-12-87 thereafter the premises that vigilance case is pending against him in terms of promotion order this promotion was withdrawn by order dated 6-5-88 with retrospective effect and orders for recovery of wages drawn as AG(II) was also issued on the ground that vigilance case is pending against

him. Subsequently a chargesheet dated 15th March, 1989 was issued to him. One A. A. Quazmi an officer of the opposite party was appointed as enquiry officer, after completing the enquiry, he submitted his report on 6th May, 1990 holding that charge was not proved. However, the disciplinary authority did not agree with this report and vide order dated 21-5-1991 held that charge was fully proved. Accordingly, the concerned workman was punished by way of stoppage of three increments with cumulative effect.

3. The concerned workman has raised the instant industrial dispute alleging that the promotion order could not be legally withdrawn as no case was pending against him. In any case it was bad in law. As regards the action of the management in its agreeing with the report of enquiry officer, it is alleged that disciplinary authority has acted contrary to Regulation No. 58 and princples of natural justice. And such the punishment is bad in law.

4. In the written statement it was alleged that the case of the concerned workman has not been properly espoused hence reference is bad. As for as withdrawal of promotion is concerned it is alleged that according to promotion order, the promotion of the concerned workman was adhoc subject to pendency of vigilance case. Later on it came to light that a vigilance case is pending hence promotion order was withdrawn.

5. With regard to second issue about disagreement with the report of enquiry officer it is alleged that disciplinary authority for valid reasons disagreed with the report of the enquiry officer, in exercise of powers under Regulation 58, hence, there is no flaw in this order as well.

6. In the rejoinder nothing new has been pleaded.

7. In the first place it will be seen if the disciplinary authoirity has acted rightly in disagreeing with the report of enquiry officer. Charge against the concerned workman reads as under:—

> The said Sri Bani Singh AG(III(D) while posted and function as such at K.G. Godown, Mathura, during 86 failed to maintain absolute integrity, devotion to duty failed to serve the organisation honestly and faithfully and also acted in a manner which is uubecoming of a Corporation employee in as such as said Sri Bani Singh in collution with S|Sri B. L. Dinesh, R.C. Sharma, AG-I(D) Unit Incharge, M. R. Sharma, AM(D) and Watch and Ward Staff posted at the Unit misappropriated 730 bags of wheat and 31 BT( ) Class and with intention to coverup his guilt and misdeed an FIR was lodged by Sri R. C. Sharma AG-I(D) Unit incharge K.G. Godown Mathura on 12-2-86. Narholi Mathura. On further investigation it was observed that this is not a theft case instead a case of misappropriation of which has been intentionally and deliberately given the shape of theft.

In his enquiry report the enquiry officer in the concluding part of enquiry report has found that there is no evidence of involvement of the concerned workman in respect of shortage, theft or disappropriation in K.G. Godown Mathura during February, 1986. He has further found that R. C. Sharma A.G.I. who was incharge of the godown was solely responsible for this shortage and for things relating to this charge. Disciplinary authority in its order daed 21-9-1991, has recorded following reasons for disagreeing with the report of the enquiry officer:—

> Whereas the undersigned has gone through the chargesheet, the enquiry report the concerned records of the case and differs wtih the findings of the enquiry officer because the A.G. III(D) working in the godown cannot be altogether ignorant of the misappropriation of such huge quantity merely on the analogy that the keys of the godown were held by the custodian|unit incharge. It is true that he was not directly involved but when such huge stock has been misappropriated the AG.III(D) of the godown cannot go free entirely. The collusion of the charged official in the misappropriation can therefore, not be ruled out.

The appellate authority in appeal has upheld the order of the disciplinary authority on the ground that he failed to inform higher authorities about the embezzlement case. From the above it will be seen that disciplinary authority has acted on the basis of whims and conjuctures. His complicity in the case cannot be inferred meaning because he was posted at this unit. As regards silence it is well known fact that junior officers dare not say anythng against their superiors and thereby feel the risk of loosing their service in one way or the other. In any case I am of the opinion that in the instant case there was no evidence worth the name on the basis of which it can be said that the concerned workman had any hand in it, specially looking, to the nature of job of A.G. III. He has to discharge second fiddle to his seniors while working at godown. Hence in the instant case I am of the opinion that disciplinary authority had not acted correctly while exercising his powers under Regulation 58 in disagreeing with the report of the enquiry officer. In other words the charged was not prayed against the concerned workman. Consequently punishment which followed this order is also bad in law and not justified. As regards the withdrawal of promotion order, I think it suffers from the legal illegality. Promotion cannot be withdrawn with retrospective effect. At the most such order can be made operative from the date of its passing. In any case the ground on which his reversion was passed was subject matter of chargesheet which has been dismissed above. It has also been found above that thte concerned workman was wrongly chargesheeted and he was innocent as such on this basis his promotion order legally cannot be withdrawn.

8. Finally the right of the concerned workman to continue the proceedings may be considered. The case of the management is that reference has been made with the initiation of Bhartiya Khadya Nigam Karamchari Sangh. Neither the concerned workman nor its representative T.B. Singh is its member, hence reference could not be made. In this regard there is evidence of Mangal Ram Pawar W.W.1 who has stated that he is the Secretary of this Sangh. Concerned workman is the member of his Sangh. Concerned workman has also filed a certified copy to show that the concerned workman was a member of this Sangh. There is no evidence to the contrary. Hence I think that this union can very well spouse the case of the concerned workman.

9. In view of above discussion my award is that punishment awarded to the concerned workman by way of stoppage of three increments with retrospective effect, for recovery of Rs. 5752 is bad in law and withdrawal of promotion from A.G. II by order dated 6-5-1986 with retrospective effect is also bad in law. Consequently, the concerned workman will be entitled for arrears of back wages ignoring the punishment order. He will be deemed to have been duly promoted w.e.f. 31-12-87 without any break. He will also be entitled for consequential and other benefits.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 13 जनवरी, 1998

का.आ. 318.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सीसी एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-98 को प्राप्त हुआ था ।

[सं. एल-22012/372/95-आईआर (सी-2)]

बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 13th January, 1998

S.O. 318.--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workman, which was received by the Central Government on the 9th January, 1998.

[No. L-22012/373/95-IR. CII]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A.,LL.B., Industrial Tribunal-I.

Dated : 19th day of December, 1997

Industrial Dispute No. 54 of 1996

BETWEEN

The Secretary, Central Council, Singareni Collieries Workers Union (AITUC), Bellampalli-504 251. ...Petitioner.

AND

The General Manager, M/s. S.C.Co. Ltd., Bellampalli, Adilabad (AP)-504 251. ...Respondent.

APPEARANCES :

Sri R. N. Reddy, Advocate—for the Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Advocates—for the Respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its Order No. L-22012|373|95-IR (C. II) dated 18th April, 1996 referred the following dispute under Section 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :

"Whether Mr. M. Seshadri Machinist of workshop of Bellampally Area is entitled for promotion as Machinist Cat. VI with effect from 1st February, 1995 in place of the vacancy caused by retirement on 31st January, 1995 of Shri B. Satyanarayana Machinist Category-VI or not? If not, to what relief he is entitled ?"

Both the parties appeared and filed their pleadings.

2. The Secretary of the Union filed a claims statement contending as follows : Sri M. Seshadri, the concerned workman in this dispute, hereinafter to be called as 'Petitioner', joined the services of the respondent-company on 15th February, 1975. He was later promoted to Category IV on 1st January, 1977 and Category V in 1980. The respondent conducted the Trade Test for promotion as Category VI. The written test and practical tests were conducted on 27th June, 1994 and 28th June, 1994 respectively. The petitioner appeared in the said test and got 78-1/2 marks. But he was not promoted to Category-VI. The petitioner is a machinist. Two turners in the area workshop, Beellampalli were promoted to Category VI. The respondent promoted one turner and one machinist to the category VI in the Mandamarri and Ramakrishnapur Workshops. Hence the machinists of Bellampalli Workshop represented the matter to the respondent. Later the union also represented to the respondent that the petitioner may be promoted to Category VI due to retirement of B. Satyanarayana on 31st January, 1995. The petitioner was not promoted, in the said vacancy. The petitioner and the union brought about the petitioner getting 78-1/2 marks in the test, to the notice of the respondent and before the Conciliation Officer. But it was not answered. The respondent took a stand that the petitioner is 6 months junior to the other two turners who were promoted to Category VI and also secured more than 50 per cent in the trade test. The management adopted a different procedure in Mandamarri workshop and gave promotion to one Machinist Sri D. S. Prabhakar. The same procedure also was followed by the management in Ramakrishnapur and one turner and one machinist were promoted to Category VI whereas the said procedure was not adopted at Bellampalli Workshop. The petitioner is a seniormost Machinist and also working in the post of Cat-VI after retirement of B. Satyanarayana from 1st February, 1995. Hence the petitioner is entitled to get promotion to Category VI from 1st February, 1995.

3. The respondent filed a counter contenoing as follows : There was a settlement between the Management and the major unions on 3rd March, 1989 under Section 12(3) of I.D. Act. All the eligible candidates, after completion of 9 years service in Category V were promoted to Category VI. The petitioner was promoted to Category VI from 1st March, 1989. All the turners and machinists have to be treated as one group and promoted subject to merit and seniority. The Category VI being a selection post, it will be filled on seniority-cum-merit basis. All the persons who got 50 per cent or more in the test are promoted subject to seniority. The respondent conducted the test on 27th June, 1994 and 28th June, 1994. The petitioner got 78-1/2 marks out of 100 marks and a panel has been prapared by the Respondent basing on seniority-cum-merit. The petitioner got Sri. No. 4 and the other three candidates namely M. Laxminarayana, M. Adinarayana and V. Rajanandan were placed in S. Nos. 1 to 3. There were only two vacancies and so. M. Laxminarayana and M. Adinarayana were promoted to Category VI. Both of them are turners and seniors to the petitioner, as turners and machinists are treated as one group. The three candidates, M. Laxminarayana, M. Adinarayana and A. Rajanandam are one and the same for the purpose of determination seniority. The administration was taken over by Naxalites in Mandamarri and Ramakrishnapur. All officers are scared of them. The 3rd candidate Sri V. Rajanandam will get promotion but not the petitioner who is in 4th place in the vacancy caused by retirement of Sri B. Satyanarayana. But the respondent does not want to fill this post as there is lot of production loss and there is no work for category VI personnel and the company is also incurring losses. The respondent issued circular for implementation of policy by virtue of settlement dated 3rd March, 1989. The said three persons will be given promotion as per the seniority in accordance with circular No. P(PM)4|3369|2121 dated 27th July, 1990. The promotions are given to the seniors. So the petitioner is not entitled to any relief.

4. The petitioner examined himself as W.W.1 and filed Exs. W1 to W10. The Personnel Officer in General Manager's Office and Executive Engi-

neer in the Workshop of Bellampalli and examined as M.W.1 and M.W.2 respectively for the respondent. They filed Exs. M1 to M6.

5. The point for consideration is whether the petitioner is entitled to promotion from 1st February, 1995 as Category VI Machinist ?

6. POINT.—Admittedly, the petitioner has been working as Machinist in Category V, by June, 1994. Himself and 3 other Machinists as well as 16 turners were instructed to appear for written test on 27th June, 1994 and practical test on 28th June, 1994 for promotion to Category VI, by Ex. W1 Notice dated 28th June, 1994. It was mentioned in Ex. W1 notice as follows :

> "There are some identified vacancies of Tradesmen of different trades in Cat. VI. It is proposed to fill up these vacancies from among the in service Fitters, Motor Mechanics, Turners/Machinists having 5 years service in Cat. V and Cat-VI (SLU) as on 1st March, 1994 in accordance with the Memo of Settlement dated 3rd March, 1989. The selection will be done through trade test consisting written test and Practical Test."

The petitioner got 78-1/2 marks in the Test. But he was placed 4th rank and he was not promoted to Category VI as there are only two vacancies. Two vacancies are given to two turners by name M. Laxminarayana and M. Adinarayana. The petitioner claims promotion on two grounds. Firstly, one turner and one machinist were promoted in Ramakrishnapur Area and Mandamarri area by Exs. W2 and W3 dated 4th November, 1991 and 25th April, 1994 respectively. Whereas in Bellampalli both the posts are given to turners ony. Secondly he contends that he should have been promoted in the vacancy caused due to retirement of Sri B. Satyanaraya on 31st January, 1995 as per Ex. W10 notice dated 3rd January, 1995. The respondent's contention is that as per the settlement Ex. M1 dated 3rd March, 1989, the turners and machinists are treated as one group for promotion to Category VI and there were two vacancies only, that both the vacancies can be given two turners only or both the vacancies can be given to Machinists only depending upon the merit. They pleaded that it does not want to fill up the vacancy created due to retirement of B. Satyanarayana as some mines were closed and there was no work and also as the company is running on losses.

7. The first point is not referred to this Tribunal at all by the Government. Any way both the parties adduced evidence and so I am giving finding on this point also. The turners or Machinists are referred to in page 7 of Ex. M1 Settlement between the Management and 6 Major unions. The relevant portion is as follows :

Turners/Machinists :

(i) It is agreed to club the designations of Turners and Machinists as Turner/Machinist.

(ii) After one year's apprenticeship under Apprenticeship Act, a candidate who posses I.T.I. qualification and N.C.T.V.T. Certificate will be placed in Category-I as 'Trainee' under the Company's Training Scheme for a period of one year. The selection for Company's training scheme will be based on a test and will be subject to the requirements of the Company. If the trainee fails to qualify in the test after the Company's training, the training will be suitably extended.

(iii) After completing one year under Company's training scheme and passing a trade test he will be appointed in Category-II as Turner/Machinist (Trainee) for a period of one year. He will be required to perform the duties assisting the Turner/Machinist to whom he is attached.

(iv) After one year in Category-II, he will be promoted to Category IV as Turner/Machinist subject to assessment report.

(v) The Turner/Machinist with 3 years of service in Cat. IV will be promoted to Cat. V, subject to assessment Report.

(vi) Turners/Machinists in Cat. V with 5 years service will be considered for promotion to Cat. VI based on availability of vacancies and a Trade Test.

(vii) The Management will provide promotional avenues for those turners/machinists who have put in 9 years service in Cat. V. If the management is not in a position to show promotional opportunities either in Underground Mines/Departments for such person, they will be placed in Category-VI subject to assessment report during 10th year of service in Category-V. They will, however, continue to perform Category-V jobs and accounted for accordingly. This will be done bi-annually on 1st April and 1st October every year to promote/place the candidates."

It can be seen from the above recitals of the settlement that the turners or Machinists are treated as one group for promotion from 1st March, 1989 and so the contention of the respondent that when there are two vacancies, both the posts can be given to turner or both the posts can be given to machinists subject to merit-cum-seniority, is correct.

Then the Management issued Ex. M2 Circular in pursuance to above settlement and another settlement dated 14th July, 1990 constituting the selection committee for promoting Category V Tradesmen including the turners and Machinists who have completed 5 years of service as on 1st May, 1989. It was mentioned in Ex. M2 that maximum marks apportioned for selection are as follows :

(i) Written test	..	20 marks
(ii) Practical test	..	50 marks
(iii) Assessment Report	..	30 marks

It is further stated that those who secure 50 per cent marks and above are eligible for promotion and such eligible candidates are to be considered for promotion on the basis of seniority-cum-merit in substantive post subject to the number of vacancies. No doubt the petitioner appears to have got more marks than the other two promoted candidates but they are the seniors than the petitioner. All candidates who got 50 per cent or more marks will be considered for promotion. Among the candidates who got more than 50 per cent marks, the seniors are to be given promotion. The qualified persons and their seniority are given in Ex. M5 note dated 2nd September, 1994 put up by the Dy. Personnel Manager. In the said note it was mentioned that Laxminarayana and Adinarayana who were promoted to Category VI, joined the services of the company in 1976. But they got promotion to Category IV and Category V earlier than the petitioner. Both were given promotion to Category VI notionally, as per cadre scheme and settlement from 1st March, 1989. The management followed the rules and there is no discrimination. It was not pleaded by the petitioner that the Management acted arbitrarily or showed any favourtism to the promoted candidates.

8. No doubt the merit-list, proceedings are not filed into Court. But there is nothing to disbelieve Ex. M5 Note in the absence of any plea of malafides or favourtism or nepotism.

9. So far as the second contention is concerned it is the prerogative of the management to fill or not to fill up the vacancies. The Court cannot force the management to fill up the post. Any way the post is a selection post and the petitioner has to undergo the process of appearing for examination, getting the highest marks etc. It is not an usual promotion which is granted automatically on the basis of seniority.

10. In view of the above finding, an Award is passed holding that the petitioner M. Seshadri is not entitled to any relief.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 19th day of December, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of evidence

Witness examined for Petitioner :

WW1 : M. Sheshadri.

Witnesses examined for Respondent :

MW1 : M. Seshaian.

MW2 : Douglus Stephen Vincent.

Documents marked for the Petitioner :

Ex. W1 : Call letter dated 18th/20th June, 1994 given to WW1 for appearing for written test on 27th June, 1994 and 28th June, 1994.

Ex. W2 : Promotion office order dated 4th November, 1991.

Ex. W3 : Promotion office order dated 25th April, 1994.

Ex. W4 : Representation dated 4th August, 1994.

Ex. W5 : Representation dated 19th August, 1994.

Ex. W6 : Representation of the union dated 16th September, 1994.

Ex. W7 : Representation dated 12th January, 1995 to the G.M.

Ex. W8 : Strike notice 7th April, 1995 issued by the Union.

Ex. W9 : Failure minutes of ALC(C) Mancherial dated 17th August, 1995

Ex. W10 : Notice of termination of employees issued to Sri B. Satyanarayana.

Documents marked for the Respondent :

Ex. M1 : Xerox copy of the settlement dated 3rd March, 1989.

Ex. M2 : Circular dated 27th July, 1990 issued by GM(P) to all Area G.Ms.

Ex. M3 : Xerox copy of service register of WW1.

Ex. M4 : Letter dated 9th August, 1994 of Dy. CIE BPA.

Ex. M5 : Note No. P. HPA/TRD VI dated 2nd September, 1994.

Ex. M6 : Relevant entry of job description and categorisation of Coal employees.

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